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THE JOINT LEGISLATIVE ETHICS COMMITTEE

Advisory Opinion 00-001
February 1, 2000

Syllabus by the Committee:

- (1) R.C. 2921.42 (A)(1) prohibits a member or employee of the General Assembly from authorizing, or using the authority or influence of his or her office, to secure authorization of a public contract in which he or she has a definite and direct pecuniary or fiduciary interest;
- (2) R.C. 2921.42(A)(4) prohibits a member or employee of the General Assembly from having an interest in a public contract entered into by or for the use of the legislative agency with which he or she is connected;
- (3) An employee of the General Assembly is prohibited from having an interest in a public contract entered into by or for the use of the legislative agency with which he or she is not connected where his or her own legislative agency provides those same services to that agency; and
- (4) Division (B) of section 102.04 of the Revised Code prohibits a member or employee of the General Assembly from selling, or agreeing to sell, goods or services to the General Assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, except through competitive bidding.

Jurisdiction and Question Presented

Pursuant to sections 101.34 and 102.08 of the Revised Code that direct the Joint Legislative Ethics Committee to act as an advisory body to the members and employees of the General Assembly on questions relating to ethics, conflicts of interest, and financial disclosure, the Joint Legislative Ethics Committee advises the members and employees of the General Assembly on the following questions: (1) Can a member or employee of the general assembly contract with the agency with which he or she is employed? (2) Can a member or employee of the general assembly contract with another legislative agency or the House or Senate? (3) Can a member or employee of the general assembly have a contract with a governmental agency, not affiliated with the general assembly?

Background

A member or employee of the general assembly may seek to establish contracts with others through their personal business. Generally when attempting to contract with private entities there are few barriers, with of course certain exceptions. However, where a member or employee seeks to contract with state agencies, several prohibitions or restrictions exist.

Your attention is directed to Section 2921.42 of the Revised Code, which reads as follows:

(A) No public official shall knowingly do any of the following:

(1) Authorize, or employ the authority or influence of his office to secure authorization of any public contract in which he, a member of his family, or any of his business associates has an interest;

(4) Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which he is connected.

R.C. 2921.01(A) defines the term "public official" for purposes of R.C. 2921.42 as "any elected or appointed officer, or employee, or agent of the state or any political subdivision thereof, whether in a temporary or permanent capacity" Therefore, both members and employees of the General Assembly are subject to the prohibitions imposed by R.C. 2921.42. "Public contract" includes the purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of a political subdivision. See R.C. 2921.42(F)(1).

Consideration of the Issues

R.C. 2921.42 (A)(1)

The Committee has previously addressed this provision, members and employees are encouraged to review Advisory Ops. 95-006 and 97-004; however, the Committee will provide a brief overview. Division (A)(1) of R.C. 2921.42 prohibits a public official from authorizing, or using the authority or influence of his office to secure authorization of, a public contract in which he has an interest. R.C. 2921.42 (A)(1) prohibits a member or employee from discussing, deliberating, recommending, or otherwise using the member or employees official authority in any way, formally or informally, to secure a contract for the member or employee. Generally, a member or employee will be deemed to have "authorized" a public contract, for the purposes of R.C. 2921.42, where the contract could not have been awarded without the member or employee's approval. Accordingly, a member or employee is prohibited by R.C. 2921.42(A)(1) from voting or participating in any part of his agency's decision-making process authorizing or approving a contract.

Therefore, the Committee finds, R.C. 2921.42 (A)(1) prohibits a public official from authorizing, or using the authority or influence of his office, to secure authorization of a public contract in which he has a definite and direct pecuniary or fiduciary interest.

R.C. 2921.42 (A)(4)

Contract with own legislative agency

Division (A)(4) of Section 2921.42 prohibits a member or employee from having an interest in a public contract entered into by or for the use of "the political subdivision or

governmental agency or instrumentality with which he is connected." See Advisory Op. 95-006 An "interest" which is prohibited under R.C. 2921.42 must be definite and direct and pecuniary in nature. A person who receives compensation for services performed under a public contract would have a definite and direct, pecuniary interest in the public contract.

Within the General Assembly, an individual can be a member or employee of the House or Senate or an employee of one of the legislative agencies. For purposes of this opinion, the term *legislative agency* encompasses not only the individual agencies (Legislative Service Commission, Legislative Information Services, Legislative Budget Office, for example), but also the House and Senate. Therefore, the Committee finds R.C. 2921.42(A)(4) prohibits a member or employee of the General Assembly from having an interest in a public contract entered into by or for the use of the legislative agency with which he or she is connected.

The Committee would note R.C. 2921.42(C) provides an exemption to the prohibition of Division (A)(4). Division (C) contains four criteria which must be met in order for a public official to be exempt from the prohibition of R.C. 2921.42(A)(4). These criteria are strictly applied against the public official or employee and the burden is upon the public official to demonstrate his compliance with the exemption.

Contract with another legislative agency

As noted above, R.C. 2921.42(A)(4) prohibits a public official from having an interest in a public contract entered into by or for the use of his own legislative agency. Within the General Assembly, many legislative agencies are required to provide services to other legislative agencies. As such, the employees of a service-provider agency are required, as part of their employment to provide those services to the other agencies. Where this type of relationship exists, an employee may not privately contract with other legislative agencies to provide those same services.

A conflict of interest clearly arises where an employee is required to provide a service to an agency through his or her employment, yet on the other hand is attempting to privately sell that same service the agency. First, the employee would be in a position where the employee

was charging the other agency for services the employee should actually be providing through his or her state employment. Second, although perhaps workable, an employee would be required to take personal or vacation time to provide the personal services to another agency since legislative agencies are only open during those times when the employee is working for his or her own agency.

Therefore, the Committee finds, an employee of the General Assembly is prohibited from having an interest in a public contract entered into by or for the use of the legislative agency with which he or she is not connected where his or her own legislative agency provides those same services to that agency.

R.C. 102.04(B)

Lastly, this Committee has previously addressed the selling of goods and services to state agencies. In Advisory Ops. 95-009 and 95-017, the Committee held Division (B) of section 102.04 of the Revised Code prohibits a member or employee of the General Assembly from selling, or agreeing to sell, goods or services to the General Assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, except through competitive bidding. Therefore, all contracts by members or employees with state agencies, including legislative agencies except where a contract may be prohibited as noted above, must be competitively let.

Conclusion

Accordingly, the Committee finds, and the members and employees of the General Assembly are so advised (1) R.C. 2921.42 (A)(1) prohibits a member or employee of the General Assembly from authorizing, or using the authority or influence of his or her office, to secure authorization of a public contract in which he or she has a definite and direct pecuniary or fiduciary interest; (2) R.C. 2921.42(A)(4) prohibits a member or employee of the General Assembly from having an interest in a public contract entered into by or for the use of the legislative agency with which he or she is connected; (3) An employee of the General Assembly

is prohibited from having an interest in a public contract entered into by or for the use of the legislative agency with which he or she is not connected where his or her own legislative agency provides those same services to that agency; and (4) Division (B) of section 102.04 of the Revised Code prohibits a member or employee of the General Assembly from selling, or agreeing to sell, goods or services to the General Assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, except through competitive bidding.

This advisory opinion is based on the facts presented. It is limited to questions arising under Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code and does not purport to interpret other laws or rules.

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Richard H. Finan, Chairman
Joint Legislative Ethics Committee