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THE JOINT LEGISLATIVE ETHICS COMMITTEE

Advisory Opinion 95-017
December 12, 1995

Syllabus by the Committee:

- (1) A member of the General Assembly is not prohibited from contracting with, or selling services on behalf of, a telecommunications company as an independent contractor and
- (2) Division (B) of section 102.04 of the Revised Code prohibits a member 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 of the General Assembly on the following question: Can a member of the General Assembly contract with a telecommunications company as an independent contractor?

Background

The member is considering establishing a business relationship with a telecommunications company as an independent contractor. The telecommunications company is a privately-

held company that buys long distance time wholesale and resells it to consumers. The company does not advertise nationally and instead relies on the word of mouth generated by a network of independent contractors. An independent contractor may be compensated in two ways. First, the contractor can sell the long distance service to customers and earn a percentage of these customer's long distance bills as a commission. Second, the contractors can recruit and train other people to be independent contractors. Independent contractors receive a percentage of the sales generated by their recruits and are also paid by the company for the training.

Consideration of the Issues

The issue of selling goods and services was recently addressed in two JLEC Advisory Opinions, 95-009 and 95-013. Pursuant to R.C. 102.08, when the Committee renders an Advisory Opinion that has been publicly sought and that relates to a special set of circumstances involving ethics, conflicts of interest, or financial disclosure under Chapter 102. or section 2921.42 or 2921.43 of the Revised Code, the person to whom the opinion was directed *or who was similarly situated* may reasonably rely upon such opinion and shall be immune from criminal prosecutions, civil suits, or actions for removal from his office or position of employment for a violation of Chapter 102. or section 2921.42 or 2921.43 of the Revised Code based on the facts and circumstances covered by the opinion. Therefore, the member is advised to review JLEC Advisory Opinions 95-009 and 95-013.

R.C. 102.04

Nothing in the Revised Code prohibits a member of the General Assembly from contracting with, or selling services on behalf of, a telecommunications company. There are, however, certain restrictions if the member attempts to sell the services to any state agency. This Committee, in Advisory Opinion 95-009, stated, "[t]he selling of goods or services by an elected official implicates R.C. 102.04(B) which provides:

(B) Except as provided in division (D) of this section, no person elected or appointed to an office of or employed by the general assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts, shall sell or agree to sell, except through competitive bidding, any goods or services to the

general assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts.

As an elected official of the General Assembly, the member is subject to the prohibitions contained in 102.04(B)." JLEC Advisory Opinion 95-009 at page 2. Based upon the restriction contained in R.C. 102.04(B), the member is prohibited from selling or agreeing to sell any long distance service to the General Assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts, except through competitive bidding.

Lastly, the member is reminded Division (D) of Section 102.03 of the Revised Code prohibits a member from using his position as a member of the General Assembly to secure anything of value for his business or for himself.

Conclusion

Accordingly, the Committee finds and the member is so advised that (1) A member of the General Assembly is not prohibited from contracting with, or selling services on behalf of, a telecommunications company as an independent contractor and (2) Division (B) of section 102.04 of the Revised Code prohibits a member 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.



William G. Batchelder, Chairman
Joint Legislative Ethics Committee