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**THE JOINT LEGISLATIVE ETHICS COMMITTEE**

Advisory Opinion 97-004  
June 26, 1997

Syllabus by the Committee:

R.C. 2921.42 does not prohibit a member of the General Assembly from being associated with a private entity that enters into a contract with another state agency provided the member is not connected with that state agency.

**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 question: Can a member of the General Assembly be associated with a private entity that enters into a public contract with a state agency?

**Background**

The member has been an employee of a private coal company since November 1969. The member has served as treasurer/comptroller and as a member of the Board of Directors of the company since 1992. The coal company is seeking to enter into reclamation contracts with the Ohio Department of Natural Resources ("ODNR"). As part of the member's duties as comptroller, the member would be required to sign the checks that are related to the contract. Some of the reclamation contracts entered into may be subject to Controlling Board approval.

Consideration of the Issues

Where a member of the General Assembly is affiliated with an entity that is entering into, or agreeing to enter into, a contract with a state entity, sections 2921.42(A), 102.03(D), and 102.04(B) of the Revised Code are relevant.

R.C. 2921.42(A)

Divisions (A)(1) and (4) of Section 2921.42 of the Revised Code are pertinent to the issue presented herein, and read 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;

The term "public contract" is defined for purposes of Section 2921.42 in Division (E) to include "the purchase or acquisition, or a contract for the purchase or acquisition of property or services by or for the use of the state..." The Ohio Department of Natural Resources is clearly a state agency and a reclamation contract is for the purchase of services; therefore, a reclamation contract by the ODNR is a "public contract" for purposes of R.C. 2921.42.

With respect to Division (A)(1), a member of the General Assembly is prohibited from authorizing a contract in which the member has an interest. Here, the contracts are entered into by ODNR, with the approval of the Controlling Board. The member is not an employee of ODNR, nor does the member sit on the Controlling Board. Therefore, the member has no authority to authorize any of the reclamation contracts and Division (A)(1) would not be applicable.

With respect to Division (A)(4), a member of the General Assembly is prohibited from having an interest in the profits or benefits of a public contract entered into by the agency with which the member is connected. An "interest" which is prohibited under Section 2921.42 must be definite and direct, and may be pecuniary or fiduciary in nature. As the treasurer/comptroller, and a member of the Board of Directors, the member would have an "interest" in the contracts of the coal company for purposes of Section 2921.42.

However, the test is two-fold, the member must have both an interest, and the contract must be entered into by the entity with which the member is "connected." The entity with which the member is "connected" is the General Assembly. Here, the contracting entity is the Ohio Department of Natural Resources, not the General Assembly. Therefore, the member is not connected with the entity entering into the contract. Even assuming approval may be required by the Controlling Board on some of the contracts, the member still is not connected with the contracting entity. The member is not a member of the Controlling Board and is not considered to be connected with the Controlling Board merely because he is a sitting member of the General Assembly.

Therefore, the member is not prohibited, pursuant to R.C. 2921.42, from acting as the treasurer/comptroller and a member of the Board of Directors for a company that enters into a contract with the ODNR.

R.C. 102.03

R.C. 102.03(D) provides:

No public official or employee shall use or authorize the use of the authority or influence of his office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties.

R.C. 102.03(D) prohibits a member from using or authorizing the use or the authority or influence of his office to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties. However, this prohibition does not, *per se*, prohibit a member from having

an interest in a public contract, as otherwise permitted by law, if the member conducts himself in any dealings with respect to the public contract in the normal manner that a business person would conduct himself and does not attempt to influence such dealings by reference to or other use of his membership in the General Assembly. Therefore, the member should avoid taking any actions that would result in his membership in the General Assembly being used to secure anything of value or the promise of anything of value, such as preferential consideration for a state contract. See Advisory Op. 95-006.

R.C. 102.04(B)

The 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, a member is subject to the prohibitions contained in 102.04(B). Therefore, under this provision, a member is prohibited from selling, or agreeing to sell, goods or services to any department, division, institution, instrumentality, board, commission, or bureau of the state, except through competitive bidding. In the circumstances presented herein, it is not the member who is attempting to sell goods or services to a state entity, it is the company for which he works that is contracting to sell goods or services to a state entity. It must be noted that the member owns no stock in the company. If the member was the sole or majority share holder in the company, depending upon the circumstances, the Committee would consider the member, and not the company, to be selling the goods and services.

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.

Conclusion

Accordingly, the Committee finds, and the member is so advised that R.C. 2921.42 does not prohibit a member of the General Assembly from being associated with a private entity that enters into a contract with another state agency provided the member is not connected with that state agency.



William G. Batchelder, Chairman  
Joint Legislative Ethics Committee