S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
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October 6, 2000

Opinion No. 00-152

County Purchasing Law of 1957

QUESTION

Do either of these two situations violate Tenn. Code Ann. § 5-14-114 prohibiting certain county officials from having an interest in county supply and service contracts:

a. A county commissioner whose spouse works for a department or agency of county government.

b. A county commissioner who works part-time as an independent contractor for a department of county government.

OPINION

a. We think a court would conclude that Tenn. Code Ann. § 5-14-114(a) does not prohibit county commissioners from being directly or indirectly interested in a spouse's full-time employment contract with the county because such a contract is not a "contract or purchase order . . . for contractual services" within the meaning of that statute. A binding determination on this issue, however, could be made only by a court of competent jurisdiction after considering all the relevant facts and circumstances.

b. This arrangement is prohibited under Tenn. Code Ann. § 5-14-114(a).

ANALYSIS

This opinion concerns conflicts of interest under the County Purchasing Law of 1957, Tenn. Code Ann. §§ 5-14-101, *et seq.*, specifically Tenn. Code Ann. § 5-14-114(a). The County Purchasing Law of 1957 is a local option act that becomes effective in a particular county upon adoption by a two-thirds vote of the county commission or on a majority vote in a countywide election. Tenn. Code Ann. § 5-14-102. The statutory scheme provides for a county purchasing agent and county purchasing commission to handle county purchases. Tenn. Code Ann. § 5-14-114(a) provides:

(a) Neither the county purchasing agent, nor members of the county purchasing

> commission, nor members of the county legislative body, nor other officials of the county, shall be financially interested, or have any personal beneficial interest, either directly or indirectly, in any contract or purchase order for any supplies, materials, equipment or contractual services used by or furnished to any department or agency of the county government.

Under Tenn. Code Ann. § 5-14-115(a), the County Purchasing Law of 1957 does not apply to county school funds for any purpose, the county board of education, and the county superintendent, unless approved by the Commissioner of Education. Upon request by a majority vote of the local board of education and with the approval of the Commisioner of Education, the applicability of the act as it applies to county school funds will cease to be effective. Tenn. Code Ann. § 5-14-115(b).

The request indicates that Blount County has adopted this act. The request includes a memorandum from the county attorney to the county executive discussing the application of Tenn. Code Ann. § 5-14-114 to two particular situations within the county government, and asks this Office to review and comment on the memorandum. Because the request is concerned with Tenn. Code Ann. § 5-14-114(a), and not Tenn. Code Ann. § 12-4-101, the general conflict of interest statute, and also because, as the memorandum indicates, the County Purchasing Law of 1957 contains the more restrictive conflict of interest provision, this opinion will address only the application of that statute to the two situations. We note that this Office has no jurisdiction in the matters you raise, nor is this opinion binding on any county officials. Further, criminal prosecutions must be initiated by the district attorney general.

Under the first situation, two members of the Blount County Commission have spouses employed by the county government. By its terms, the statute prohibits a county commissioner from being "financially interested," or from having "any personal beneficial interest, either directly or indirectly," in any "contract or purchase order for any supplies, materials, equipment or contractual services used by or furnished to any department or agency of the county government." As the memorandum indicates, this Office has concluded that a county commissioner has an indirect interest in an employment contract between the county and his or her spouse if they commingle assets. Op.Tenn.Atty. Gen. 93-73 (December 28, 1993). For this reason, it could therefore be argued that, unless the spouse's contract is paid from county school funds, or is with the county board of education, or the county superintendent and the exemption under Tenn. Code Ann. § 5-14-115 applies, Tenn. Code Ann. § 5-14-114(a) prohibits this arrangement.

We think, however, that the phrase "contract . . . for contractual services" as used in Tenn. Code Ann. § 5-14-114(a) was intended to apply to contracts for the services of independent contractors, and not to the employment contracts governing full-time county employees. For example, Tenn. Code Ann. § 5-14-108(a)(1) requires various purchase, supply, and rental contracts, including purchases of and contracts for purchases of contractual services, to be based whenever possible on competitive bids. Ordinarily full-time county employees are not hired through competitive bidding. Purchase orders or contracts executed under the County Purchasing Law of 1957 must be in writing, with copies furnished to the "vendor," the county accounting department, and two copies retained by the county purchasing agent.

Tenn. Code Ann. § 5-14-111(b). Further, the County Purchasing Law nowhere addresses personnel issues. *See also* Tenn. Code Ann. § 5-5-102(a)(4)(A) and Tenn. Code Ann. § 12-4-101(c)(a county commissioner may serve as a county employee). For these reasons, we think a court would conclude that Tenn. Code Ann. § 5-14-114(a) would not prohibit county commissioners from being directly or indirectly interested in a spouse's full-time employment contract with the county. A binding determination on this issue, however, could be made only by a court of competent jurisdiction after considering all the relevant facts and circumstances.

In the second situation, one or two county commissioners perform work as independent contractors for the sheriff's department. We think a court would conclude that the sheriff's department is a "department or agency" of the county government within the meaning of Tenn. Code Ann. § 5-14-114(a). This arrangement therefore appears to be prohibited under Tenn. Code Ann. § 5-14-114(a).

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