

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
425 FIFTH AVENUE NORTH
NASHVILLE, TENNESSEE 37243

November 22, 2000

Opinion No. 00-181

Conflict of Interest -- County Financial Management System of 1981, TENN. CODE ANN. §§ 5-21-101, et seq.

QUESTION

Is it a conflict of interest for Cumberland County (through its general fund) or the Cumberland County School Board to purchase items from a business owned by the spouse of an employee of the Cumberland County School Board?

OPINION

Yes. It is the opinion of this office that the sale of items by the spouse of an employee of the school board to that same school system would give rise to a prohibited conflict of interest under TENN. CODE ANN. § 5-21-121, the conflict of interest provision of the County Financial Management System of 1981, TENN. CODE ANN. §§ 5-21-101 to -129, which has been adopted in Cumberland County.

ANALYSIS

Your opinion request states that Cumberland County (through its general fund) and the Cumberland County School Board currently purchase items from a business owned by an individual whose wife is employed by the Cumberland County School Board as a teacher. The husband and wife commingle their assets. Your request also states that Cumberland County has opted to be governed by the County Financial Management System of 1981, TENN. CODE ANN. §§ 5-21-101 to -129. Your question is whether the county's and the school board's purchases from this business violate any conflict of interest statutes.

Several sections of the Tennessee Code set out the guidelines for determining prohibited conflicts of interest. Those sections most applicable to the situation you have described include TENN. CODE ANN. §§ 12-4-101 and 5-21-121.

TENN. CODE ANN. § 12-4-101 is the general conflict of interest statute. This statute applies to any "officer, committee member, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract." TENN. CODE ANN. § 12-4-101(a) & (b). This type

of individual may face a prohibited conflict of interest if this individual has a “direct” or “indirect interest” in the contract being entered. *Id.* Section 12-4-101(a) defines “directly interested” as “any contract with the official personally or with any business in which the official is the sole proprietor, a partner, or the person having the controlling interest.” Section 12-4-101(b) defines “indirectly interested” as “any contract in which the officer is interested but not directly so, but includes contracts where the officer is directly interested but is the sole supplier of goods or services in a municipality or county.” In previous opinions dealing with TENN. CODE ANN. § 12-4-101, this office has opined that when spouses commingle assets, a person has an indirect interest in any contract directly affecting his or her spouse’s employment. *Ops. Tenn. Atty. Gen.* 88-122 (July 13, 1988); 84-030 (January 27, 1984).

The situation described in your opinion request does not violate TENN. CODE ANN. § 12-4-101. As a teacher, the employee presumably is not part of the decision-making process regarding the purchases by the school board from the business owned by the employee’s husband. Consequently, because the employee does not fall within the category of persons subject to the statute, it is irrelevant whether the employee has any interest in the contract at issue.

Second, we look at Tenn. Code Ann. § 5-21-121, the conflict of interest provision included in the County Financial Management System of 1981. In general, the County Financial Management System of 1981 is a local option act which establishes a central financial system that administers all county departments, including the county education department. TENN. CODE ANN. § 5-21-103(d). *See also* TENN. CODE ANN. §§ 5-21-110(d)(4), -116(a) and -124. Section 5-21-121, the conflict of interest provision, provides:

- (a) The director, purchasing agent, members of the committee, members of the county legislative body, or other officials, employees, or members of the board of education or highway commission shall not be financially interested or have any personal beneficial interest, either directly or indirectly, in the purchase of any supplies, material or equipment for the county.

Compared to TENN. CODE ANN. § 12-4-101, TENN. CODE ANN. § 5-21-121 has a much broader application, because it encompasses employees, such as teachers, as well as persons responsible for handling county purchases. This statute provides that such persons “shall not be financially interested or have any personal beneficial interest, either directly or indirectly, in the purchase of any supplies, materials or equipment for the county.” TENN. CODE ANN. § 5-21-121 does not define the term “interest,” but, on previous occasions when interpreting other conflict of interest statutes, this office has adopted the definition of “interest” contained in TENN. CODE ANN. § 12-4-101. *See, e.g.,* *Op. Tenn. Atty. Gen.* 84-201 (June 27, 1984) (concluding that TENN. CODE ANN. § 12-4-103 relating to State employees is violated when spouse of full-time University employee is major stockholder of business selling computers to University). Similarly, as discussed earlier, this office has concluded that an employee has an indirect financial interest in a transaction if the employee commingles assets with a family member who does business with the

government.

Under the facts you have provided, the county and the school board purchase items from a business owned by the spouse of a teacher. The teacher and her husband commingle their assets. It is the opinion of this office that TENN. CODE ANN. § 5-21-121 prohibits these purchases, because the teacher, as spouse of the owner of the business, has an indirect beneficial interest and/or indirect financial interest in the transactions.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

EUGENIE B. WHITESELL
Assistant Attorney General

Requested by:

The Honorable Lincoln Davis
State Senator
Suite 6-A Legislative Plaza
Nashville, TN 37243-0212