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Opinion No. 02-128

Conflict of Interest Under the County Management Financial System of 1981

QUESTIONS

1. Under Tenn. Code Ann. § 5-21-121(a), "members of the board of education . . . 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." This statute is part of a local option act. In a county that has adopted this act, is a member of the county board of education prohibited from contracting with the county to provide counseling services to the sheriff's department of the county?

2. Does Tenn. Code Ann. § 5-21-121(a) prohibit any employee of any county agency from holding any of the offices listed in the statute?

3. If the answer to either of the above is yes, what would be the effect of votes taken while the employee or independent contractor was holding office?

OPINIONS

1. Assuming the school board has no authority to vote for, let out, overlook, or superintend a contract with the county sheriff's department for counseling services, Tenn. Code Ann. § 12-4-101(a) does not prohibit a member of the school board from entering into such a contract. Further, this arrangement does not violate Tenn. Code Ann. § 5-21-121 because that statute applies only to a contract for the purchase of supplies, materials, or equipment — not to a contract for personal services.

2. Tenn. Code Ann. § 5-21-121(a) does not prohibit a county employee from also being the director of the county finance department, purchasing agent, member of the county financial management committee, member of the county legislative body, member of the board of education or highway commission, or any other county official. Depending on the facts and circumstances, other statutes might prohibit the employment. Under Tenn. Code Ann. § 49-2-203(a)(1)(D), for example, a member of the board of education may not serve as a teacher or in any other position under the board that is salaried or compensated. In addition, a county employee could be prohibited from serving in a county office if that officer votes for, lets out, overlooks, or in any manner superintends that employee's employment contract within the meaning of Tenn. Code Ann. § 12-4-101(a). Special provisions apply to county commissioners under Tenn. Code Ann. § 12-4-101(c).

3. Except for the narrow exception of a county commissioner in Tenn. Code Ann. § 12-4-101(c)(1), a violation of the general conflict of interest statute or Tenn. Code Ann. § 5-21-121(a) has no effect on the validity of an official's vote.

ANALYSIS

1. Conflict of Interest

A. Conflicts of Interest under Tenn. Code Ann. § 12-4-101

This opinion addresses whether a member of a county school board may contract with the county sheriff's department to provide counseling services. The request indicates that the county in question has adopted the County Financial Management System of 1981, Tenn. Code Ann. §§ 5-21-101, *et seq.*

Tenn. Code Ann.§ 12-4-101 is the general conflict of interest statute. Under Tenn. Code Ann. § 12-4-101(a), a public official whose duty it is to "vote for, let out, overlook, or in any manner to superintend" a contract in which a public agency is interested may not be directly interested in such contract. "Directly interested" means 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. Under Tenn. Code Ann. § 12-4-101(b), a public officer whose duty it is to "vote for, let out, overlook, or in any manner to superintend" a contract in which a public agency is interested may not be indirectly interested in the contract unless the officer publicly acknowledges his or her interest. "Indirectly interested" means 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.

Under this statute, a member of the school board may not be directly interested in any contract with the county or school board that the board votes for, lets out, overlooks, or in any manner superintends. Assuming the school board has no authority to vote for, let out, overlook, or superintend a contract with the county sheriff's department for counseling services, Tenn. Code Ann. § 12-4-101(a) does not prohibit a member of the school board from entering into such a contract.

B. County Financial Management System of 1981

The next question is whether Tenn. Code Ann. § 5-21-121(a) prohibits a member of the county school board from contracting with the county sheriff's department to provide counseling services. This statute is part of the County Financial Management System of 1981, Tenn. Code Ann. §§ 5-21-101, *et seq.* This statutory scheme is a local option act that is effective upon its adoption by the county commission or a popular referendum. Tenn. Code Ann. § 5-21-126. Section 5-21-121 provides:

> (a) The director [of the finance department], 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, materials or equipment for the county.*
>
> (b) No firm, corporation, partnership, association or individual furnishing any such supplies, materials or equipment, shall give or offer nor shall the director or purchasing agent or any assistant or employee accept or receive directly or indirectly from any person, firm, corporation, partnership or association to whom any contract may be awarded, by rebate, gift or otherwise, any money or other things of value whatsoever, or any promise, obligation or contract for future reward or compensation.

(Emphasis added). By its terms, subsection (a) of the statute forbids county officials and employees from being directly or indirectly interested in the purchase of any supplies, materials or equipment for the county. The statute does not prohibit county officials and employees from being directly or indirectly interested in the purchase of services for the county.[1] Tenn. Code Ann. § 5-21-121(a), therefore, does not prohibit a member of the county school board from contracting with the county sheriff's department to provide counseling services.

2. Tenn. Code Ann. § 5-21-121(a) and County Employment

The next question is whether Tenn. Code Ann. § 5-21-121(a) prohibits a county employee from also being the county finance director, purchasing agent, member of the county financial management committee, member of the county legislative body, member of the board of education or highway commission, or any other county official. This statute prohibits all these officials from being financially interested or having any personal beneficial interest "in the purchase of any supplies, materials or equipment for the county." We do not think this term would include an employment contract. For this reason, Tenn. Code Ann. § 5-21-121(a) does not prohibit a county employee from also being the county finance director, purchasing agent, member of the county financial management committee, member of the county legislative body, member of the board of education or highway commission, or any other county official. Of course, depending on the facts and circumstances, other statutes could prohibit the particular employment. Under Tenn. Code Ann. § 49-2-203(a)(1)(D), for example, a member of the board of education may not serve as a teacher or in any other position under the board carrying with it a salary or compensation. Further, a county

[1] By contrast, the County Purchasing Law of 1957 contains a conflict of interest statute that expressly prohibits county officials and employees from a financial interest 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." Tenn. Code Ann. § 5-14-114(a) (emphasis added). Op. Tenn. Atty. Gen. 00-152 (October 6, 2000).

employee could be prohibited from serving in a county office if that officer votes for, lets out, overlooks, or in any manner superintends that employee's employment contract within the meaning of Tenn. Code Ann. § 12-4-101(a). Special provisions apply to county commissioners. Tenn. Code Ann. § 12-4-101(c).

3. Effect of Conflict of Interest on Official's Vote

The last question is the effect of a violation of the conflict of interest provisions on an official's vote. State law provides for statutory penalties against an official who violates the general conflict of interest statutes, but it does not void most decisions made by that official while in office. The only exception would be where a county commissioner who is a county employee votes on a matter relative to his or her employment, but does not inform the commission of the conflict as required under Tenn. Code Ann. § 12-4-101(c)(1). In that case, the member's vote is void if challenged during the same meeting at which the vote was cast and prior to the transaction of any further business by the body. Similarly, the County Financial Management System of 1981 provides penalties for a violation of the duties imposed by the statutory scheme. Tenn. Code Ann. § 5-21-125. It does not, however, provide that a vote cast by an official violating Tenn. Code Ann. § 5- 21-121(a) is void. For this reason, except for the narrow exception of a county commissioner in Tenn. Code Ann. § 12-4-101(c)(1), a violation of the general conflict of interest statute or Tenn. Code Ann. § 5-21-121(a) has no effect on the validity of an official's vote.

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