

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
425 Fifth Avenue North  
NASHVILLE, TENNESSEE 37243-0497

April 1, 2003

Opinion No. 03-034

Conflicts of Interest: Claims Commissioner and State Senator Leasing Property to State for Use as Claims Commissioner's Office

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**QUESTION**

The Facilities Management Office of the State Department of Finance and Administration will advertise for bids pursuant to Tenn. Code Ann. § 12-2-114 to rent office space in Dresden, Tennessee, for the Tennessee Claims Commissioner for the Western Division. The claims commissioner and her spouse, who is a State senator, own property with others and would like to submit a bid. Would prohibited conflicts of interest arise if the claims commissioner and her spouse lease property to the State?

**OPINION**

No.

**ANALYSIS**

Because both the claims commissioner and the senator are officers of the State, a conflict of interest could arise with respect to either or both officers. This opinion addresses each scenario.

Claims Commissioner as Lessor to State. Tennessee Code Ann. § 12-4-101, the general conflict of interest provision, provides the following regarding direct and prohibited conflicts of interest:

(a) (1) It is unlawful for 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 in which any municipal corporation, county, state, development district, utility district, human resource agency, or other political subdivision created by statute shall or may be interested, to be directly interested in any 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. "Controlling interest" includes the individual with the ownership or control of the largest number of outstanding shares owned by any single individual or corporation. The provisions of this subdivision shall not be construed to prohibit any officer, committee person, director, or any person, other than a

member of a local governing body of a county or municipality, from voting on the budget, appropriation resolution, or tax rate resolution, or amendments thereto, unless the vote is on a specific amendment to the budget or a specific appropriation or resolution in which such person is directly interested.

Tenn. Code Ann. § 12-4-101.<sup>1</sup> Thus, the statute prohibits an officer — or an entity or business in which he or she is financially interested, as defined in the statute — from entering into a contract with the state where it is the officer's duty to vote for, let out, overlook, or superintend the contract.

The proposed transaction does not fall within the statute, because a claims commissioner does not have the duty to vote for, let out, overlook, or superintend the rental agreement. Rather, the Department of Finance and Administration will procure the lease through a competitive bid procedure. The claims commissioner and the other owners of the property will submit a bid with all other potential lessors. If successful, the claims commissioner will be a lessor and occupant of the leased premises, yet management of the lease agreement would not fall within the claims commissioner's official duties.

State Senator as Lessor to State. This office previously has opined that it is not a conflict of interest under Tenn. Code Ann. § 12-4-101 for a legislator to lease property to a department or agency of state government. Atty. Gen. Op. No. U92-87 (July 6, 1992) (copy attached). In brief, a contract between a legislator and a state agency for the lease of property is a direct interest under Tenn. Code Ann. § 12-4-101(a)(1), because the making of a general appropriation out of which contractual funds are eventually expended makes the appropriating body a superintending agency. A legislator may therefore be said to be superintending state contracts. The last sentence of Tenn. Code Ann. § 12-4-101(a)(1), however, clarifies that individual legislators may vote on the budget even if a direct conflict of interest exists. Accordingly, Tenn. Code Ann. § 12-4-101(a)(1) does not prohibit a legislator from leasing property to a state agency.

Tennessee Code Ann. §§ 8-50-501 to -505 also deal with conflicts of interest. Tennessee Code Ann. § 8-50-501(a)(1) requires each member of the general Assembly to disclose interests that fall within the purview of Tenn. Code Ann. § 8-50-502. These interests include general sources of income of more than \$1,000.00. Tenn. Code Ann. § 8-50-502(1). A lease of property to the State obviously would fit this definition.

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<sup>1</sup> No other statutes or policies about prohibited conflicts of interest apply to claims commissioners. The opinion request specifically asks whether the ethics policies recently implemented under Executive Order Nos. 1-3, dated February 3, 2003, would apply. These policies affect only certain executive branch employees and, thus, do not apply to claims commissioners who fall under the administration of the Treasury Department. Tennessee Code Ann. § 9-8-302(c) does specify that claims commissioners are subject to the standards of conduct contained in the Code of Judicial Conduct of the Rules of the Tennessee supreme court. This opinion does not address whether the questioned transaction would violate any provisions of the Code of Judicial Conduct or the Code of Professional Responsibility.

We do not address whether the questioned transaction would violate any provisions of the State Senate's Code of Ethics, which is set forth in Rule 85 of the Senate Rules of Order ("the Code"). We think these issues should be addressed by the Senate Committee on Ethics.

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