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Opinion No. 08-30

Sheriff's Dispatcher Funded by Emergency Communications District Serving as District Director

QUESTION

The Clay County Sheriff hires emergency communications dispatchers, who work in his office. Each year, the county receives an E-911 Rural Dispatcher Assistance Grant. The communications district transfers this grant to the county, and the grant funds part of the dispatchers' salaries. May a sheriff's employee who serves as a dispatcher legally serve as a member of the emergency communications district board?

OPINION

Since the individual is an employee of the sheriff's office, and not of the district, this situation would not violate Tenn. Code Ann. § 7-86-105(i). So long as the board's award of the grant agreement does not control the terms of employment between the dispatcher and the sheriff's office, the director has no prohibited direct conflict of interest in that contract in violation of Tenn. Code Ann. § 12-4-101(a). The board director has an indirect interest in the employment contract that must be disclosed under section (b) of Tenn. Code Ann. § 12-4-101.

ANALYSIS

This opinion concerns whether a sheriff's employee may legally serve as a member of the county emergency communications district board of directors under the following circumstances. The request states that the Clay County Sheriff hires emergency communications dispatchers, who work in his office. Each year, the county receives an E-911 Rural Dispatcher Assistance Grant. The communications district transfers this grant to the county, and the grant funds part of the dispatchers' salaries.

Emergency communications districts are established and operate under Tenn. Code Ann. §§ 7-86-101, *et seq.* Tenn. Code Ann. § 7-86-105 provides for the membership and duties of the board of directors of an emergency communications district. Tenn. Code Ann. § 7-86-105(i) provides that "[n]o member of the board of directors shall be an employee of the emergency communications district." Based on the facts presented, the dispatcher is not an employee of the emergency communications district, but of the sheriff's office. The dispatcher's service as a director of the district, therefore, would not violate Tenn. Code Ann. § 7-86-105(i).

This arrangement must also be analyzed under Tenn. Code Ann. § 12-4-101, the general statute on conflicts of interest. This statute pertains to contracts. Under subsection (a)(1) of the statute, a public official may not be directly interested in a contract the official has a duty to vote for, let out, overlook, or superintend. Under subsection (b), a public official must disclose any indirect interest in such contracts. The statute provides in relevant part:

> 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 (a)(1) *shall not be construed to prohibit any officer, committeeperson, 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(a)(1) (emphasis added). A person who becomes unlawfully interested in a contract under this statute must forfeit all pay and compensation for the contract. Tenn. Code Ann. § 12-4-102. Further, the person must be dismissed from office and remain ineligible for the same or a similar position for ten years. *Id.*

Section 12-4-101 prohibits officials from being directly interested in a contract that they have a duty to award or supervise. An individual is "directly interested" in a contract only if the contract is with that individual personally or with a business in which the individual owns the controlling interest. This office has taken the view that those who vote on budgets and appropriations superintend the contracts paid for by those budgets and appropriations. Op. Tenn. Att'y Gen. 98-188 (October 2, 1998). But, while the grant transfer funds part of the dispatcher's employment contract with the sheriff, based on the facts presented, the board has no other authority to supervise the contract or to specify its terms. So long as the board's award of the grant agreement does not control the terms of employment between the dispatcher and the sheriff's office, therefore, the director has no prohibited direct conflict of interest in that contract in violation of Tenn. Code Ann. § 12-4-101.

Under Tenn. Code Ann. § 12-4-101(b), an official must disclose his or her interest in a contract in which he or she is indirectly interested. The term "indirectly interested" means any contract in which the officer is interested but not directly so. Tenn. Code Ann. § 12-4-101(b). Under

this statute, the board director has an indirect interest in the employment contract that must be disclosed.

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