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Opinion No. 09-44

State Legislator Contracting with Non-Profit State Grant Recipient

QUESTION

A non-profit corporation (the "corporation") operates at least four federal programs funded through state departments. The corporation wishes to lease a building from a state legislator. The corporation will not use grant funds it receives through the state departments to pay the lease. Does this arrangement violate any state law or state grant agreement?

OPINION

No. First, the state grant funds will not be used to pay the lease. Second, under Tenn. Code Ann. § 12-4-101(a)(1), a state legislator may be directly interested in a contract funded from state funds, so long as the legislator's only duty with regard to the contract is to vote on the budget act that funds it. The legislator must disclose his or her interest. The four grant agreements that we have reviewed do not prohibit the corporation from renting property from a state legislator. The corporation should comply with all applicable federal regulations in awarding and implementing the lease.

This opinion does not address whether the agreement would violate any rules of the House of which the legislator is a member. That issue should be addressed to the legislative committee charged with interpreting those rules.

ANALYSIS

This opinion concerns whether any state law or state grant agreement would prohibit a member of the General Assembly from renting a building to a non-profit corporation (the "corporation") that receives federal grant funding administered through two different state executive departments. The corporation would not use state grant funds to pay for the lease from the legislator.

The general conflict of interest law appears at Tenn. Code Ann. § 12-4-101. Subsection (a)(1) addresses prohibited conflicts of interest. Under this provision, an officer may not be directly interested in any agreement he or she has the duty to vote for, let out, overlook, or

superintend. Our Office has stated in the past that a legislator superintends a contract if he or she votes on the budget that funds the contract. Op. Tenn. Att'y Gen. 03-034 (April 1, 2003). Therefore, a state legislator superintends any grant agreement between the corporation and a state executive department within the meaning of Tenn. Code Ann. § 12-4-101(a)(1) and, potentially, any contract funded by the grant. The term "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. A state legislator would be directly interested in a lease between himself and a state grantee. But Tenn. Code Ann. § 12-4-101(a)(1) does not prohibit the lease for two reasons. First, the lease will not be funded from state grant money. Second, even if state grants funds were used to pay the lease, a legislator may vote on a budget funding a contract in which he or she is directly interested. The final sentence of Tenn. Code Ann. § 12-4-101(a)(1) provides:

> 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.

Thus, under this provision, a state legislator may be directly interested in a contract funded by state moneys, so long as the legislator's only duty with regard to the contract is to vote on the general appropriations act. Under Tenn. Code Ann. § 12-4-101(b), a public officer must publicly acknowledge any contract in which he or she is indirectly interested. "Indirectly interested" means any contract in which the officer is interested, but not directly so. Even assuming that the corporation will not use state grant funds to pay rent to the legislator, it appears that the legislator is indirectly interested in the grant agreements between the State and the corporation. For this reason, the legislator should disclose the interest. The lease must also be disclosed under Tenn. Code Ann. § 8-50-502(1) if it brings in an income of more than one thousand dollars.

The request includes four grant agreements and currently effective amendments between a state executive department and the corporation. Under each of these agreements, the corporation agrees to administer a program with grant funds. All of these programs appear to be funded primarily with federal funds administered through a state executive department. Each contract contains the following standard provision:

> The Grantee warrants that no part of the total Grant Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for ***acting as an officer, agent, employee, subcontractor, or consultant to the grantee in connection with any work contemplated or performed relative to this grant contract.***

(Emphasis added). Again, the request notes that no state grant funds will be used to pay the lease. In any case, this contract provision prohibits funds from being used to pay a state employee or official for services performed relative to the grant agreement. It does not prohibit

the corporation from leasing a building from a state legislator. For these reasons, neither state law nor the available state contracts prohibit the corporation from renting property from a state legislator. The corporation should comply with all applicable federal regulations in awarding and implementing the lease.

This opinion does not address whether the agreement would violate any rules of the House of which the legislator is a member. That issue should be addressed to the legislative committee charged with interpreting those rules.

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