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Opinion No. 09-109

Conflict of Interest: Local Government Project Manager

QUESTIONS

This request concerns a project manager for a local governmental entity's building project. The project manager approves purchases and invoices for building materials bought from a store in which the manager owns a controlling interest.

1. Does this arrangement violate Tenn. Code Ann. § 12-4-101 or any other state statute?

2. Would a violation of state law occur if the job description for the project manager is revised to remove the project manager from overseeing invoices and purchases for a project?

OPINIONS

1. We think that under these facts the manager, in his capacity as a local governmental employee, overlooks or superintends the purchasing agreement between the local governmental entity and the manager's store. The arrangement, therefore, violates Tenn. Code Ann. § 12-4-101(a)(1), unless the manager's store is the sole supplier of the goods purchased under the agreement within that city or county. If the manager's store is the sole supplier of the goods within the city or county, then the arrangement does not violate Tenn. Code Ann. § 12-4-101(a)(1), but the manager must publicly acknowledge his or her interest in the contract.

Whether the arrangement violates any other provision of state statute depends on the particular local governmental entity involved. Applicable private acts or local option acts adopted by the entity could also prohibit the arrangement.

2. The answer to this question depends on the specific facts and circumstances, particularly the manager's other duties with regard to the project. If, in the exercise of his duties, the manager actually overlooks or otherwise superintends the purchase of building supplies for the project from the manager's store, then the arrangement would violate Tenn. Code Ann. § 12-4-101(a)(1) regardless of whether the manager's job description is revised to remove the project manager from overseeing invoices and purchases for the project. Whether the change in the job description would prevent a violation of any other state statute would depend on the applicable private or local option act.

ANALYSIS

This request concerns a project manager for a local governmental entity's building project. The project manager approves purchases and invoices for building materials bought from a store in which the manager owns a controlling interest. The first question is whether this arrangement violates Tenn. Code Ann. § 12-4-101 or any other statute. A definitive answer to this question depends on the specific facts and circumstances. We assume, for example, that the project manager is a governmental official or an employee, and not an independent contractor hired to manage the project. *See* Op. Tenn. Att'y Gen. 00-117 (July 5, 2000) (Tenn. Code Ann. § 12-4-101 does not apply to a construction manager who is not a public officer or official). Assuming this is the case, then the project manager is making purchases directly on behalf of the local government. Tenn. Code Ann. § 12-4-101 is the general conflict of interest statute. Subsection (a)(1) of this 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.

Under this statute, an official or other person whose duty it is to vote for, let out, overlook, or in any manner superintend a contract in which a governmental entity is interested may not be directly interested in that contract. "Directly interested" means a 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. Tenn. Code Ann. § 12-4-101(b) requires disclosure of indirect interests. This section provides:

> 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 indirectly interested in any such contract unless the officer publicly acknowledges such officer's interest. ***"Indirectly interested" means any contracts 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.***

(Emphasis added). Thus, under this statute, an officer may superintend a contract in which he or she is directly interested if the officer is the sole supplier of goods or services in the local area. In this case, it appears that the local government has a purchasing agreement with a project manager's store. The project manager is directly interested in that contract within the meaning of Tenn. Code Ann. § 12-4-101(a)(1). The manager is responsible for approving purchases and invoices under the purchasing agreement. We think that under these facts the manager, in his capacity as a local governmental employee, overlooks or superintends the purchasing agreement

between the manager's store and the local governmental entity. The arrangement, therefore, violates Tenn. Code Ann. § 12-4-101(a)(1), unless the manager's store is the sole supplier of the goods purchased under the agreement within that local government's area. If the manager's store is the sole supplier of the goods within the city or county, then the arrangement does not violate Tenn. Code Ann. § 12-4-101(a)(1), but the manager must publicly acknowledge his or her interest in the contract.

Whether the arrangement violates any other provision of state statute depends on the particular local governmental entity involved. Applicable private acts or local option acts adopted by the entity could also prohibit the arrangement. *See, e.g.*, Tenn. Code Ann. § 5-14-114 (County Purchasing Law of 1957 prohibiting "officials of the county" from having any direct or indirect interest in any contract for supplies furnished to any department or agency of the county government).

The second question is whether a violation of state law would occur if the manager's job description is revised to remove the project manager from overseeing invoices and purchases for the project. The answer to this question depends on the specific facts and circumstances, including the manager's other duties with regard to the project. If, in the exercise of his duties, the manager actually overlooks or otherwise superintends the purchase of building supplies for the project, then the arrangement would violate Tenn. Code Ann. § 12-4-101(a)(1) regardless of whether the manager's job description is revised to remove the project manager from overseeing invoices and purchases for the project. Whether the revision would prevent a violation of any other state statute would depend on the applicable private or local option act.

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