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July 12, 2019

To: UCCI Membership

Re: Conflict of Interest of County Board Member Involving Private Employment

Issue:

Does a board member who holds a supervisory position with a technology company that the County contracts with for technology services have a conflict of interest that prevents the board member from serving on the County Board? If not, would it prevent the board member from serving on the County's standing committee for technology?

Analysis:

Section 3 of the Public Officer Prohibited Activities Act (the "Act") provides that

No person holding any office, either by election or appointment under the laws or Constitution of this State, may be in any manner financially interested directly in his own name or indirectly in the name of any other person, association, trust, or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote. No such officer may represent, either as agent or otherwise, any person, association, trust, or corporation, with respect to any application or bid for any contract or work in regard to which such officer may be called upon to vote. Nor may any such officer take or receive, or offer to take or receive, either directly or indirectly, any money or other thing of value as a gift or bribe or means of influencing his vote or action in his official character. **Any contract made and procured in violation hereof is void. This Section shall not apply to any person serving on an advisory panel or commission, to any director serving on a hospital district board as provided under subsection (a-5) of Section 13 of the Hospital District Law, or to any person serving as both a contractual employee and as a member of a public hospital board as provided under Article 11 of the Illinois Municipal Code in a municipality with a population between 13,000 and 16,000 that is located in a county with a population between 50,000 and 70,000.¹**

¹ 50 ILCS 105/3 (emphases added).

“[T]he Illinois Supreme Court has stated that section 3 of the Act is intended to prohibit interests which prevent or tend to prevent a public official from impartial or faithful service. Further, the court has stated that the language of section 3 addresses not only the actual bad-faith abuse of power for an officer's own personal benefit, but also is designed to prevent the creation of relationships which carry the potential for abuse. Thus, the central concern of the Act is the existence of competing interests or loyalties which could hamper a person's performance as a public officer.”²

The Illinois Attorney General has previously opined “[a]n employee is deemed to have at least an indirect pecuniary interest in the contracts of his or her employer.”³ “When a member of a governing body anticipates that he or his employer will benefit financially from a contract awarded by the body, that knowledge will naturally affect his judgment in determining to award the contract.”⁴ Moreover, abstaining from voting does not prevent a conflict of interest under Section 3 of the Act.⁵

In addition to the above-described statutory conflict of interest, “it is well established that a member of a governmental body who has a personal interest in a matter coming before the body is disqualified, under the common law, from voting or otherwise acting thereon. * * * Such potential common law conflicts of interest can arise whenever official action could result in a personal advantage or disadvantage to the interested official, even in circumstances which are not violative of section 3 of the Public Officer Prohibited Activities Act.”⁶ In an instance where an independent insurance agent serving as the chairman of the insurance committee, the chairman was not an employee of a particular agency but may benefit indirectly “[b]y being in a position to help steer business to the agency, he may indirectly benefit himself in his business relationship with the agency.”⁷ The Attorney General opined in that scenario that such a common law conflict existed, and “[i]n order to avoid the potential for abuse of official power in these circumstances, it is my opinion that the chairman must disqualify himself from voting or otherwise acting in any way in his capacity as chairman of the insurance committee upon matters in which the [insurance agency in question] is interested.”⁸

Conclusion:

Where a board member is an employee of a company that contracts with the County, that board member is “interested” in the contracts of his or her employer. Where such an interest occurs, that

² Ill. Att’y Gen. Op. 92-019 (Sept. 24, 1992) citing People v. Adduci, 412 Ill. 621, 627 (1952); Brown v. Kirk, 64 Ill.2d 144, 151 (1976); Croissant v. Joliet Park District, 141 Ill.2d 449, 458 (1990).

³ Ill. Att’y Gen. Op. 93-014 (June 21, 1993) citing 1974 Ill. Att’y Gen. Op. 201, 203; Ill. Att’y Gen. Op. No. NP-901 at 4.

⁴ Ill. Att’y Gen. Op. 93-014 (June 21, 1993) citing 1972 Ill. Att’y Gen. Op. 266.

⁵ “It is my opinion that the abstention from voting does not prevent a conflict of interest. Section 3 of the Corrupt Practices Act applies to any contract upon which such officer may be called upon to vote.” Ill. Att’y Gen. Op. S-1031 (January 8, 1976) citing Peabody v. Sanitary District, 330 Ill. 250 (1928)

⁶ Ill. Att’y Gen. Op. 93-010 (May 25, 1993) citing In re Heinrich 10 Ill. 2d 357, 384 (1956); 1977 Ill. Att’y Gen. Op. 51; see generally Annotation 10 ALR 3d 694; Reckner v. School District 19 A.2d 402, 403 (S. Ct. Pa. 1941); Piggaott v. Borough of Hopewell 91 A.2d 667 (N.J. Super. 1952).

⁷ Ill. Att’y Gen. Op. 93-010 (May 25, 1993)

⁸ Ill. Att’y Gen. Op. 93-010 (May 25, 1993)

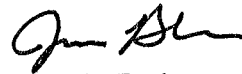
board member shall not be a part of the contracting or the performance of any work in the making or letting of the contract or work.

For these reasons, it is this office's opinion that a county board member who holds a supervisory position with a technology company that contracts with the county for technology services has a conflict of interest. With respect to the board member's service on the full county board, it is not enough for the board member to simply abstain from any votes on a contract or related work. An interested county board member must, at a minimum, abstain from participating, in any way – including deliberations, in the contracting, letting, or contributing in the resulting work arising out of the interest in question, which in this case is technology. With respect to the county board member's committee position, it would be nearly impossible that such a member could serve on the standing committee on technology without implicating the conflict and/or giving rise to questions about whether any discussions or recommendations are motivated by generating additional work under the contract with the board member's employer or potentially excluding other parties from contracting for the same work. Finally, county boards and their members should be careful to avoid such conflicts because where a violation is found, Section 3 provides “[a]ny contract made and procured in violation hereof is void.”

At the request and direction of UCCI this opinion was prepared by
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Herman G. Bodewes



Jason E. Brokaw