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Conflicts of Interest

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Conflicts of Interest

Reference Number: CTAS-623

Most county governments in Tennessee do not experience lobbying at the local level in the same way it happens at the General Assembly. Generally speaking, where there is a danger of a conflict of interest or undue influence of a county official, it relates not to the exercise of legislative authority but to the exercise of purchasing power, such as when the county commission votes on a county contract.

General Conflict of Interest Law

Reference Number: CTAS-2463

In this area county officials and employees in all counties are subject to T.C.A. § 12-4-101. Under T.C.A. § 12-4-101(a)(1), it is unlawful for a public official, or other person, whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract with the county, 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.

In *Madison County v. Alexander*, 94 S.W. 604 (Tenn. 1906), the Tennessee Supreme Court noted that "[i]t is the policy of the law to prohibit members of the county court from making contracts with their own members (meaning the county court), for any purpose which calls for compensation out of the county treasury." The Court stated:

The underlying principle is that no man shall be allowed to make a contract with the county, whose duty it is to pay for such contract. In other words, he cannot make a contract to pay himself out of the public treasury for any purpose. That such a rule may operate harshly is no argument against it. It is based on a wise purpose and principle, that is, to prevent public officials from using their public functions and duties to subserve their private interests. It does not matter that the service is rendered faithfully and inures to the benefit of the county, or that the material may be necessary and cheaply furnished.

Id. See also *Cagle, for Use of Cagle v. Benton County*, 181 S.W.2d 1 (Tenn. 1944).

Because the making of a general appropriation out of which contractual funds are eventually expended makes the appropriating body a superintending agency, a county commissioner may be said to be superintending county contracts. See Op. Tenn. Atty. Gen. 03-034 (April 1, 2003); Op. Tenn. Atty. Gen. 08-15 (January 30, 2008) (the Attorney General's office has taken the view that those who vote on budgets and appropriations superintend the contracts paid for by those budgets and appropriations). Accordingly, it would be unlawful for a county commissioner who owns a wrecker service to do business with the county even if he abstains from voting on the wrecker contract.

The Attorney General has opined that the term "directly interested" refers to a personal pecuniary interest (Op. Tenn. Atty. Gen. U96-043 (June 4, 1996)) and has concluded that T.C.A. § 12-4-101(a)(1) prohibits an officer from being directly interested in a contract, whether or not he or she abstains from voting on it. Op. Tenn. Atty. Gen. 04-016 (February 5, 2004).

The Attorney General has opined that a county commissioner has a direct interest in a contract for the sale of his land to the county and that such a contract is prohibited under T.C.A. § 12-4-101(a). Op. Tenn. Atty. Gen. 04-016 (February 5, 2004). A county commissioner whose duty it is to provide funds for construction contracts entered into by the county school board cannot enter into a construction contract with the county board of education without violating T.C.A. § 12-4-101(a). Op. Tenn. Atty. Gen. 91-31 (April 9, 1991). See also Op. Tenn. Atty. Gen. 83-336 (October 5, 1983) (a county commissioner cannot contract with the board of education of his county to provide school bus service); Op. Tenn. Atty. Gen. 83-229 (May 3, 1983) (a county commissioner cannot contract with his county hospital to provide computer services to the county hospital).

An official who violates the provisions of T.C.A. § 12-4-101 shall forfeit all pay and compensation under the contract and shall be dismissed from office and shall be ineligible for the same or a similar position for ten years. T.C.A. § 12-4-102. See *State v. Perkinson*, 19 S.W.2d 254 (Tenn. 1929) (contracts by officers with county subject officials to removal); *Madison County v. Alexander*, 94 S.W. 604 (Tenn. 1906) (member of county court was refused recovery for supplies sold to county workhouse in violation of the statute); *Hope v. Hamilton County*, 47 S.W. 487 (Tenn. 1898) (member of the county court was held not to be able to recover from the county for services performed for the county); *M. F. Parsley & Co., Inc., v. Cole & Miller*, 1926 WL 1963 (Tenn.Ct.App. 1926) (member of the county court who was the stockholder of a corporation owning a lumber yard could not lawfully contract with the county for building a school).

See *also* Op. Tenn. Atty. Gen. 04-016 (February 5, 2004) (an officer who enters into a contract in violation of T.C.A. § 12-4-101 must forfeit compensation received under the contract, and a suit to enforce this provision is a quo warranto action ordinarily brought by the District Attorney General).

Besides prohibiting direct conflicts of interest, the statute also requires disclosure of any indirect financial interests. The statute states in pertinent 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 indirectly interested in any such contract unless the officer publicly acknowledges such officer's interest. "Indirectly interested" means any contract 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.

T.C.A. § 12-4-101(b). See Op. Tenn. Atty. Gen. 09-48 (April 2, 2009) (the chairman of the county school board who is employed by an architectural firm that contracts with the school board has an indirect interest which must be disclosed); Op. Tenn. Atty. Gen. 09-109 (June 8, 2009) (purchase of building materials - sole supplier); Op. Tenn. Atty. Gen. 99-185 (September 17, 1999) (contract for services - sole supplier).

The question often arises whether it is proper for a county official to have authority over a matter that will have a direct financial benefit to a relative. This question arises most often when the person who will receive the direct financial benefit is the spouse of a county official. In opinions dealing with T.C.A. § 12-4-101, the Attorney General has opined that when spouses commingle assets, a person has an indirect interest in any contract directly affecting his or her spouse's employment. Op. Tenn. Atty. Gen. 05-017 (February 3, 2005); Op. Tenn. Atty. Gen. 00-181 (November 22, 2000); Op. Tenn. Atty. Gen. 88-122 (July 13, 1988); Op. Tenn. Atty. Gen. 84-030 (January 27, 1984). Accordingly, if a county commissioner and his wife commingle assets he is "indirectly interested" in any contract his wife's company may enter into with the county. Under T.C.A. § 12-4-101, the commissioner must disclose any indirect pecuniary interest in a contract with the county if he has the duty to vote for, let out, or superintend that contract. See *also* Op. Tenn. Atty. Gen. 05-017 (February 3, 2005) (official should abstain from voting or participating in official acts or proceedings that directly affect contracts with a relative).

The disclosure of indirect interests required by the statute calls for the "public acknowledgment" of such interests. What is necessary for public acknowledgment is unclear, especially in the context of an official such as the register of deeds acting independently, as opposed to a member of the county legislative body announcing at a regular meeting that the member has an indirect interest prior to a vote. A county official should therefore be careful in indirect conflict of interest situations to provide public notice of these interests prior to taking any action. For example, if a county clerk purchases supplies from a corporation in which the clerk owns a small minority (not plurality) interest, this interest must be disclosed publicly. Because the county clerk has no natural public forum, some form of written public notice via bulletin boards in the courthouse or notice in a newspaper of general circulation in the county may be appropriate.

Special Rules for County Commissioners who are County Employees

Reference Number: CTAS-625

Countywide officeholders, such as the county mayor, sheriff, trustee, register, county clerk, or assessor of property, are statutorily prohibited from being nominated for or elected to membership in the county legislative body. T.C.A. § 5-5-102. However, county employees may hold the office of county legislative body member. Any county employee who is otherwise qualified may serve as a member of the county legislative body, notwithstanding the fact that such person is a county employee. T.C.A. § 5-5-102.

In 2016, the Legislature enacted Public Chapter 1072, effective May 20, 2016. This new law changes the conflict of interest provisions for county commissioners who are county employees or whose spouses are county employees. Pursuant to the new law, no member of the county legislative body who is also an employee of the same county or whose spouse is an employee of the same county may vote on matters in which the member has a conflict of interest. The new law provides that a conflict of interest is created when a member is voting on a matter which, if approved by the legislative body, would increase the pay or benefits of that member or that member's spouse. However, the new law does not prohibit a member 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 the member has a conflict of interest. If a member of a county governing body who is voting on a proposed budget, appropriation resolution, or tax rate resolution, or amendments thereto, has a conflict of interest, then the member must declare the conflict of interest at the meeting prior to casting the member's vote. A member who abstains from voting for cause on any issue coming to a vote before the body is not counted for the purpose of determining a majority vote. These new provisions have been codified as T.C.A. § 5-5-112.

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