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Opinion No. 09-48

Conflict of Interest: Chairman of County School Board

QUESTION

The Chairman of the Maury County School Board is employed by an architectural firm that contracts with the Maury County School Board. Does the chairman have a prohibited conflict of interest in contracts between the firm and the board?

OPINION

No. Based on these facts, the chairman's interest in contracts between his employer and the school board is not a direct conflict of interest prohibited by the general conflict of interest statute, Tenn. Code Ann. § 12-4-101(a). But the interest is an indirect conflict that must be disclosed under Tenn. Code Ann. § 12-4-101(b). Research indicates that Maury County has adopted Tenn. Code Ann. §§ 5-14-101, *et seq.*, which contain a more restrictive conflict of interest provision than Tenn. Code Ann. § 12-4-101. But that provision does not apply to the school board without the approval of the Tennessee Commissioner of Education. We find no evidence that such approval was ever given. Finally, we think a court would conclude that Tenn. Code Ann. § 49-6-2003(a), which prohibits a school official from being directly or indirectly interested in "supplying books, maps, school furniture and/or apparatus" to the public, does not apply to a contract for services. Assuming the contract in question is for the provision of services, therefore, Tenn. Code Ann. § 49-6-2003 would not prohibit a member of the board of education from being employed by an architectural firm that provides architectural services to the board.

ANALYSIS

This opinion addresses conflicts of interests. The request states that the Chairman of the Maury County School Board is employed by an architectural firm that contracts with the board. Of course, whether a conflict of interest exists depends on specific facts and circumstances. Based on the facts presented, however, the chairman does not have a prohibited conflict of interest in contracts between the school board and the architectural firm that employs him. The general conflict of interest law is Tenn. Code Ann. § 12-4-101. Under subsection (a)(1), it is unlawful for an official "whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract" in which a governmental entity may be interested to be directly interested in 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.” Tenn. Code Ann. § 12-4-101(a)(1). “Controlling interest” includes “the individual with the ownership or control of the largest number of outstanding shares owned by any single individual or corporation.” *Id.*

In this case, the school board contracts with an architectural firm. The contract is not with the chairman personally. Further, the chairman does not have a controlling interest in the architectural firm, but is merely its employee. For this reason, the chairman does not have a prohibited conflict of interest in a contract between the school board and the architectural firm. Under Tenn. Code Ann. § 12-4-101(b), however, the chairman must disclose an indirect interest in school board contracts he has a duty to vote for, let out, overlook, or in any manner superintend. “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.” Tenn. Code Ann. § 12-4-101(b). In this case, we think a court would conclude that the chairman has an indirect interest in contracts between his employer and the school board that must be disclosed under Tenn. Code Ann. § 12-4-101(b).

Recent Maury County audit reports indicate that Maury County has adopted the County Purchasing Law of 1957, Tenn. Code Ann. §§ 5-14-101, *et seq.* (“Purchasing Law”). Under Tenn. Code Ann. § 5-14-114(a), county officials may not be financially interested or have any personal beneficial interest, directly or indirectly, in a contract for supplies or services furnished to a county agency. But, unless approved by the Tennessee Commissioner of Education, the Purchasing Law does not apply to county school funds for any purpose, the county board of education, and the county director of schools. Tenn. Code Ann. § 5-14-115(a). Audit reports indicate that the Maury County School Board is not subject to the Purchasing Law and operates under the purchasing requirements in Tenn. Code Ann. § 49-2-203, which sets forth the powers and duties of local boards of education. We have found no evidence that the Commissioner of Education ever approved the Purchasing Law’s application to the school board as required under Tenn. Code Ann. § 5-14-115(a). Thus, Tenn. Code Ann. § 5-14-114 does not apply to the Maury County School Board.

Finally, the statutes applicable to local school systems do not appear to prohibit this arrangement. Tenn. Code Ann. § 49-6-2003(a) provides:

It is unlawful for any teacher, supervisor, commissioner, director of schools, member of a board of education or other school officer in the public schools to have any pecuniary interest, directly or indirectly, in supplying ***books, maps, school furniture and/or apparatus*** to the public schools of the state, or to act as agent for any author, publisher, bookseller or dealer in such school furniture or apparatus on promise of reward for such person’s influence in recommending or procuring the use of any book, map, school apparatus or furniture of any kind, in any public school; provided, that nothing in this section shall be construed to include authors of books.

We think a court would conclude that this statute prohibits school officials from having a direct or indirect pecuniary interest in providing tangible personal property to public schools.

The statute does not define the term “apparatus.” Terms used in a statute should be given their common, ordinary meaning without forced or subtle construction. *AFG Industries, Inc. v. Cardwell*, 835 S.W.2d 583, 584 (Tenn. 1992). In construing a statute exempting “machinery, apparatus, and equipment” from sales and use taxes, the Tennessee Supreme Court in *AFG Industries* cited the following definitions:

An apparatus is defined as the “totality of means by which a designated function is performed or a specific task executed,” *The American Heritage Dictionary* (1969), and as “a set of materials or equipment designed for a particular use.” *Webster’s Ninth New Collegiate Dictionary* (1990). It contemplates a collection of component parts “designed for a specific mechanical or chemical action or operation.” *Webster’s Third New International Dictionary* (1976).

Id. at 585 (italics in original). *See also Dennis v. Erin Truckways, Ltd.*, 188 S.W.3d 578, 591-593 (Tenn. 2006) (term “apparatus” used in a workers’ compensation statute includes medically necessary modifications to an injured worker’s house, but not the entire cost of housing). In light of these definitions, we think a court would conclude that the term “apparatus,” as used in Tenn. Code Ann. § 49-6-2003(a), includes school equipment and other tangible personal property, but does not apply to a contract for services. Assuming the contract in question is for the provision of services, therefore, Tenn. Code Ann. § 49-6-2003 would not prohibit a member of the board of education from being employed by an architectural firm that provides architectural services to the board.

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