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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

TROY KING
ATTORNEY GENERAL

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Municipalities – Conflicts of Interest –
Competitive Bid Law – Officers and
Employees – Contracts – Baldwin County

A Class 7 or 8 municipality may enter into a contract with a business owned by a municipal officer or employee if the officer or employee is the only domiciled vendor of the personal property or service within the municipality, the officer or employee does not participate in the decision-making process, and the cost does not exceed \$3000.

If the cost exceeds \$3000, the municipality may contract with the municipal officer or employee under the Competitive Bid Law, provided the official or employee does not participate in the decision-making process, is the lowest responsible bidder, and makes a full disclosure of the extent of his or her ownership in the business. The municipal officer or employee may act as a subcontractor on city work exceeding \$3000 if the official or employee does not participate in the decision-making process and makes a full disclosure of the extent of his or her ownership in the business.

Dear Mr. Whetstone:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS

1. Under what circumstances and procedures may a public official or city employee contract to do business with a Class 7 or 8 municipality?

2. Does the fact that the business is owned or controlled by the public official or employee and is a corporation doing business with the city make a difference?

3. Does the fact that the business is owned or controlled by the public official or employee and is a subcontractor of a general contractor doing business with the city make a difference?

FACTS AND ANALYSIS

Section 11-43-12 of the Code of Alabama prohibits an officer or employee of a municipality from being directly or indirectly interested in any work, business, or contract, the cost or price of which is paid from the municipal treasury. ALA. CODE § 11-43-12 (1989).

Section 11-43-12.1 of the Code of Alabama states as follows:

(a) Notwithstanding any statute or law to the contrary, any municipality, in *Class 7 or 8*, may legally *purchase from any of the elected officials of such municipality or employees of such municipality or board members of municipal boards* organized under statutory authority by or for such municipality, any personal service or personal property, provided the elected official, employee or board member is the *only domiciled vendor* of the personal service or personal property, within the municipality and such elected official, employee or board member, may legally sell such personal service or personal property to the municipality. The cost or value of such personal service or personal property authorized to be obtained

or purchased under this section shall *in no event exceed the sum of \$3,000.00*. The elected official, employee or board member, if he proposes to sell to the municipality, shall *not participate in the decision-making process* determining the purchase of such personal service or personal property

(b) Notwithstanding any statute or law to the contrary, any municipality, in Class 7 or 8, *may legally purchase from any of the elected officials, employee or board member, of such municipality* any personal service or personal property *under the Competitive Bid Law* procedures established by Article 3, Chapter 16, Title 41, and such elected officials, employee or board member may legally sell such personal service or personal property to such municipality under the procedures of said statutes. The elected official, employee or board member, if he proposes to bid, shall *not participate in the decision-making process* determining the need for or the purchase of such personal service or personal property, or in the determination of the successful bidder

It is the intention of the legislature by the adoption of this section to specifically remove any statutory or legal prohibitions against municipalities, in Classes 7 and 8, dealing with their elected officials, employees or board members, in the purchase of personal services or personal property.

(c) *In the event an elected official, employee or board member, offers to sell or submit a bid* to the municipality, for the sale of personal property or a contract for furnishing personal services, the said official, employee or board member, *shall make full disclosure of his ownership or extent of ownership in the business organization with which he is associated*. In the event the business organization is a partnership, the names and addresses and percentage of ownership of the partners shall be disclosed and, in the event the business organization is a corporation, the names and

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addresses and percentage of ownership of all stockholders shall be disclosed. The disclosure required hereunder, shall be made, under oath of the elected official, employee or board member, in the original submission to the municipality and in like manner in any contract or agreement entered into with the municipality.

ALA. CODE § 11-43-12.1 (1989)(emphasis added).

This Office has explained section 11-43-12.1 as follows:

This section clearly permits a Class 7 or 8 municipality to legally purchase personal property or personal services from elected municipal officials, employees, or board members of such municipality if the official or employee is the only domiciled vendor of the personal property or service within the municipality and the cost of the purchase does not exceed \$3000. If the purchase does exceed \$3000, the municipality may purchase from any elected official, employee, or board member any personal service or personal property under the Competitive Bid Law, provided the official, employee, or board member does not participate in the decision-making process and the official, employee, or board member is the lowest responsible bidder. The official, employee, or board member shall make a full disclosure of the extent of his or her ownership in the business.

Opinion to Honorable Dan Warnes, Attorney, City of Guntersville, dated May 23, 2006, A.G. No. 2006-099, at 4. *See also* opinions to Honorable C. Daniel White, Attorney, Town of Flomaton, dated June 20, 2006, A.G. No. 2006-109; Honorable Rodney Christian, Mayor, Town of Odenville, dated April 21, 2005, A.G. No. 2005-118.

Your last question requires a closer analysis. The plain language of section 11-43-12.1 limits its operation to a direct interest in a contract. By this train of thought, the general prohibition in section 11-43-12 against an indirect interest would continue to apply in a Class 7 or 8 municipality. Such an interpretation would operate to permit a municipal officer or employee to

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directly contract with a Class 7 or 8 municipality but bar an indirect interest as a subcontractor. This Office has concluded that section 11-43-12 precludes a municipal officer or employee from subcontracting to perform under a contract between the city and its prime contractor. Opinion to Honorable William J. Trussell, Attorney, City of Pell City, dated February 19, 1981, A.G. No. 81-00258.

The fundamental rule of statutory construction is to ascertain and give effect to the intent of the Legislature in enacting the statute. *Ex parte Ala. Dep't of Mental Health & Mental Retardation*, 840 So. 2d 863, 867 (Ala. 2002). A literal interpretation of a statute that would defeat the purposes of the statute should not be adopted if another reasonable interpretation can be given to it. *Odum Lumber Co. v. S. States Iron Roofing Co.*, 36 Ala. App. 270, 272, 58 So. 2d 641, 643 (1951). Courts do not interpret provisions in isolation, but consider them in the context of the entire statutory scheme. *Siegelman v. Ala. Ass'n of School Boards*, 819 So. 2d 568, 582 (Ala. 2001).

The more reasonable construction is that the Legislature intended to authorize a municipal officer or employee to act as a subcontractor on city work for a Class 7 or 8 municipality in addition to contracting directly with the municipality. This conclusion is supported by the legislative purpose stated in section 11-43-12.1 itself. Rather than mirroring the language used throughout the statute regarding "purchasing from" or "selling" by a municipal officer or employee, the Legislature broadly stated that it was its intent to "to specifically remove any statutory or legal *prohibitions* against municipalities, in Classes 7 and 8, *dealing* with their elected officials, employees or board members, in the purchase of personal services or personal property." ALA. CODE § 11-43-12.1(b) (1989) (emphasis added). Therefore, this Office has previously recognized that "[s]ection 11-43-12.1 of the Code relaxes the *restrictions* found in section 11-43-12 when such agreements are made in Class 7 and 8 municipalities," i.e., as to both direct and indirect interests. Opinion to Honorable Robert D. McWhorter, Jr., Attorney for City of Hokes Bluff, dated April 3, 2007, A.G. No. 2007-071 (emphasis added).

It is the opinion of this Office that a municipal officer or employee may act as a subcontractor on city work exceeding \$3000 if the official or employee does not participate in the decision-making process and makes a full disclosure of the extent of his or her ownership in the business.

This Office does not opine on ethical issues and advises you to seek an opinion from the Alabama Ethics Commission.

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CONCLUSION

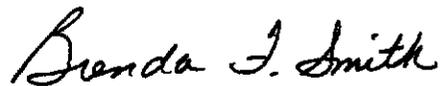
A Class 7 or 8 municipality may enter into a contract with a business owned by a municipal officer or employee if the officer or employee is the only domiciled vendor of the personal property or service within the municipality, the officer or employee does not participate in the decision-making process, and the cost does not exceed \$3000.

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I hope this opinion answers your questions. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

TK/GWB

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