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SPRINGFIELD

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FILE NO. S-1031

**OFFICERS:**  
**Conflict of Interest**

Honorable Robert H. Howerton  
State's Attorney  
Williamson County  
Courthouse  
Marion, Illinois 62959

Dear Mr. Howerton:

This responds to your request for an opinion as to whether certain aldermen and the mayor of Johnston City have conflicts of interest with regard to a proposed conveyance of city park property to the school district. You state that the city proposes to convey to the school district certain city park property in return for other lands owned by the Johnston City School District No. 1. The possibility of a conflict grows out of the following situation:

"The wife of the President of the Johnston City School District #1 Board of Trustees is a full time employee of the City of Johnston City. An

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alderman of the Johnston City Council is a past full time employee of the school district, but is now retired as a full time employee; however, he is a part time employee of the school district. The wife of this alderman is a full time school employee. A school board member is a full time employee of the city. Another alderman is a full time employee of the school. The mayor of the city has an application for a position in the school district, but has not yet been hired, and his wife is a part time employee of the school district."

Section 3 of "AN ACT to prevent fraudulent and corrupt practices, etc." [Corrupt Practices Act] (Ill. Rev. Stat. 1973, ch. 102, par. 3) provides that no officer may be in any manner interested either directly or indirectly in any contract in regard to which such officer may be called upon to vote. Section 3-14-4 of the Illinois Municipal Code (Ill. Rev. Stat. 1973, ch. 24, par. 3-14-4) provides essentially the same thing but specifically with regard to municipal officers.

I am of the opinion for the reasons discussed below that in the situation presented, the mere possibility that an officer may have a personal pecuniary interest in the proposed contract would not void the contract; but if an officer does have an actual pecuniary interest in the proposed contract, it would be void. You will therefore have to determine from

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the particular facts whether any officer has an actual interest in the proposed contract.

Before discussing this I will deal with your secondary question which is whether, if there is a conflict, the municipal officers may disqualify themselves from the vote regarding the conveyance of property so as to make the vote valid and to absolve themselves from possible charges of conflict of interest. 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. The Illinois Supreme Court in Peabody v. Sanitary District, 330 Ill. 250, held that a person who did not vote was still in violation of the Act since he could have been called upon to advise a public body on the contract in which he was interested. I have consistently advised that the abstention from voting is of no effect. Until recently there was no support from Illinois cases for any argument to contradict this position. I must draw your attention, however, to the case of Brown v. Kirk, No. 74-210, in which the Appellate Court for the Fifth District, made the statement that if a tenant member of a public housing

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commission would be called upon to vote on a matter of personal financial interest, a conflict of interest problem could be solved by a withdrawal from discussion and voting in the particular instance. I have filed a petition for leave to appeal with the Illinois Supreme Court for review of that decision.

Considering then your primary question, I think it is clear that if the city were dealing with a private corporation rather than another public body, the proposed contract would be void. In The People v. Sperry, 314 Ill. 205, the court held that a contract between a city and a corporation of which nine members of the city council were employees, was void. The court stated at page 209 as follows:

"\* \* \* If we attach any significance to the words used by the statute, 'directly or indirectly interested in the contract,' we think the conclusion cannot be escaped that the officers of the city who are also employees of the contractor must be considered as indirectly interested in the contract, without regard to the fact that they derived no direct benefits from the contract itself. They would be more than human if they could make the same fair and impartial contract with the contractor as they could with another party with whom they had no relation, by way of employment or otherwise.  
\* \* \*"

This rule is applied regardless of whether there is an actual conflict and regardless of the good faith of the individuals involved.

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However, Illinois courts have recognized that not all interests will make a contract void. The Appellate Court in Panozzo v. City of Rockford, 306 Ill. App. 443, stated at page 451 as follows:

"\* \* \* whether they had an indirect interest in the contract, which would annul the contract, is a question to be determined.

In the case of Edward E. Gillen Co. v. City of Milwaukee, 174 Wis. 362, 183 N.W. 679, it is stated: 'We would not hold that under all circumstances a contract between a municipality and a corporation having an employee who is also a public officer of the municipality would be invalid. The compensation of the employee might be so slight or his employment so transient that there would arise no conflict of interest.' In Tuscan v. Smith, 130 Me. 36, 153 Atl. 289, 73 A.L.R. 1344, it is conceded that indebtedness of a person, with whom the city executes a lease, to a member of the town board of selectmen, does not necessarily create a pecuniary interest, directly or indirectly, of the selectman and vitiate his vote. It is plain from an analysis of the cases in the notes following the report of the Tuscan case in 73 A.L.R., that the question whether the relation of a debtor of a contracting party, to a public officer constitutes an interest within the statute or rule of common law against such officer being interested in a contract with the public, is to be determined from the facts and circumstances appearing in evidence. In the case of Wayman v. City of Cherokee, 204 Iowa 675, 215 N.W. 655, it is held that the question whether the relationship as creditor of a councilman with a contractor to whom was let a contract to do cement work for the city presented a question of fact as to whether the councilman was directly or indirectly interested in the contract. Also, the general rule is, that relationship of a public officer to a contractor is not a disqualifying interest making it

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unlawful for an officer to be interested in a public contract, without proof that the officer has a pecuniary interest in the contract.

(Thompson v. District Board of School Dist. No. 1 of Moorland Township, 252 Mich. 629, 233 N.W. 439, 74 A.L.R. 790, and cases cited there in the annotation, p. 792, et seq.; Tuscan v. Smith, supra.)

\* \* \*

The Supreme Court in The People v. Adduci, 412 Ill.

621, recognized that whether a conflict of interest exists could well depend on the facts and circumstances shown in each particular case. It stated at page 627 as follows:

\* \* \* The interest against which the prohibition is leveled is such an interest as prevents or tends to prevent the public official from giving to the public that impartial and faithful service which he is in duty bound to render and which the public has every right to demand and receive. Not every interest is a bad or corrupt interest. The desire of every public official to serve the public faithfully necessarily requires him to take a keen interest in the affairs of his office and the prohibition is manifestly not leveled against this interest. Whether or not the interest in any given case comes within the prohibition of the statute may well become a question of construction for the court in view of all the facts and circumstances shown in the particular case. [cites omitted]

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In the situation presented in your request, the city is not dealing with a private corporation; it is dealing with another public body. I have found no case which deals with a

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situation in which employees of one public body sit as officers on another. One of the reasons for this is that the considerations which lead to the conclusion that a contract between a public body and a private corporation is void when there is any possibility of conflict of interest are not as persuasive when the contract is between two public bodies.

First, the pecuniary interest is not as certain. The interest that a public official has in a contract with an entity of which he is an employee is that his salary or wage will continue or increase as the corporation continues to exist and grow. This same interest is not necessarily present to as great a degree when a person works for a public body. In the particular situation presented by your request, both the city and the school district are fulfilling public purposes which by statute are required to be continued. Furthermore, salary or wage increases are not as readily or conveniently granted in the public sector.

Secondly, with the adoption of the Illinois Governmental Ethics Act (Ill. Rev. Stat. 1973, ch. 127, pars. 601-101 et seq.) Illinois has sought to prohibit conflicts of interest not by prohibiting certain interests per se but by requiring disclosure

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of economic interests by public officials. Under section 4A-102 of the Act (Ill. Rev. Stat. 1973, ch. 127, par. 604A-102) the municipal officers are required to disclose the name of any unit of government which has employed them.

Thirdly, under "AN ACT in relation to the transfer of real estate owned by municipalities" (Ill. Rev. Stat. 1973, ch. 30, par. 156) a municipality may transfer the land to the school district without advertising for bids as would be required if the land were being transferred to a private individual. It may transfer the land upon such terms as may be agreed upon by the corporate authorities.

I am, therefore, of the opinion that a contract between two public bodies is not void wherever there is a mere possibility that an officer of one has an interest in that contract. There must be an actual interest. This you will have to determine from the particular facts in the situation.

Very truly yours,

A T T O R N E Y   G E N E R A L