



ROLAND W. BURRIS
ATTORNEY GENERAL
STATE OF ILLINOIS

May 25, 1993

FILE NO. 93-010

GOVERNMENTAL ETHICS AND
CONFLICT OF INTEREST:
Insurance Agent on
County Insurance Committee

Honorable Thomas J. Brown
State's Attorney, Livingston County
Livingston County Courthouse
Pontiac, Illinois 61764

Dear Mr. Brown:

I have your letter wherein you inquire whether the chairman of the County board's insurance committee, who is an independent insurance agent who leases office space from an insurance agency, has a prohibited interest in a contract where that agency, after competitive bidding, was awarded the county's health insurance contract. Based upon the information you have provided, it is my opinion that this relationship does not give rise to a violation of section 3 of the Public Officer Prohibited Activities Act (Ill. Rev. Stat. 1991, ch. 102, par.

Honorable Thomas J. Brown - 2.

3; 50 ILCS 105/3 (West 1992)), but that it does give rise to a common law conflict of interest.

You have stated that the Norgaard Agency, which is an independent insurance agency representing the Washington National Insurance Company, was the successful bidder for the county's health insurance contract. The chairman of the county board's insurance committee (who was acting as such at the time the county awarded its insurance contract in 1992) is an independent insurance agent who maintains office space on the premises of the Norgaard Agency. He is not an employee of the Agency, but does receive commissions on business he places through the Agency, and such commissions represent a significant portion of his business. One half of the commissions resulting from business which he places with the Agency is paid to the Agency to cover the costs of his office overhead. The chairman's expertise in the insurance business was relied upon by the committee in considering the cost of changing carriers and factoring that cost into its determination of the lowest responsible bidder.

Section 3 of the Public Officer Prohibited Activities Act provides, in part:

"(a) No person holding any office, either by election or appointment under the laws or constitution of this state, may be in any manner interested, either directly or indirectly, in his own name or 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. * * * Any contract made and procured in violation hereof is void.

* * *

"

Section 3 is applicable to any contract in which a public officer has a pecuniary interest, if the officer may be called upon to act or vote upon the award of the contract. (People v. Savaiano (1976), 66 Ill. 2d 7.) Clearly, the chairman of the insurance committee was in a position to vote or otherwise act upon the award of the insurance contract, in his capacity as a county board member. The circumstances which you have described do not, however, demonstrate that he had a pecuniary interest, either direct or indirect, in the contract in question.

The mere existence of a business relationship between a public officer and a contractor is not violative of section 3 unless the officer has an actual, pecuniary interest in a contract of the public entity which he or she serves. (Panozzo v. City of Rockford (1940), 306 Ill. App. 443, 452.) In People ex rel. Pearsall v. Sperry (1925), 314 Ill. 205, municipal officers who were employees of a contractor doing business with the city were considered to have an indirect pecuniary interest in their employer's contract. Similarly, Attorney General Scott concluded that a school board member who was employed by the school's insurer had a prohibited interest in the insurance

Honorable Thomas J. Brown - 4.

contract (1974 Ill. Att'y Gen. Op. 201), and also that a county board member who was a subcontractor of a contractor on a county project had a prohibited interest in the contractor's contract. (1972 Ill. Att'y Gen. Op. 263.) Each of these cases, however, is distinguishable factually from the circumstances which you have described.

You have stated that the committee chairman is not an employee of the Norgaard Agency, and receives no commission or other compensation from the Agency's contracts with the county. His income consists of commissions on the business he generates, and he pays a portion of that income to the Agency for his office space. Although he conducts a large part of his business through the Agency, you have not indicated that he is required to do so. Presumably, as an independent insurance agent, the chairman may do business with any number of insurance companies, but will receive commissions only for that business which he generates.

Based upon these facts, I do not believe that the chairman has the sort of pecuniary interest in the business welfare of the Norgaard Agency that an employee has in the business of his employer. Unlike an employee, the chairman's income is not dependent upon the profitability of the Agency, and he does not share, even indirectly, in the profits of its business. Consequently, in the absence of facts indicating that the chairman has a pecuniary interest in the Agency's

contract with the county, it is my opinion that the insurance contract you have described is not prohibited by section 3 of the Public Officers Prohibited Activities Act.

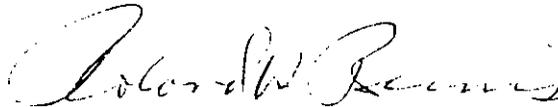
As I have previously stated in opinion Nos. 92-012, issued June 19, 1992, and 92-026, issued October 27, 1992, however, it is well established that a member of a governmental body who has a personal interest in a matter coming before the body is disqualified, under the common law, from voting or otherwise acting thereon. (In re Heinrich (1956), 10 Ill. 2d 357, 384; 1977 Ill. Att'y Gen. Op. 51; see generally Annotation 10 ALR 3d 694; Reckner v. School District (S. Ct. Pa. 1941), 19 A.2d 402, 403; Piggott v. Borough of Hopewell (N.J. Super. 1952), 91 A.2d 667.) 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.

Although the chairman of the insurance committee does not have a prohibited interest in the county's insurance contract, he does maintain a close business relationship with an insurance agency which has, and may be expected to continue to, bid upon the county's insurance contract. As chairman, he is in a position to influence the recommendations of the insurance

Honorable Thomas J. Brown - 6.

committee, which, in turn, may economically benefit the insurance agency in question. By being in a position to help steer business to the agency, he may indirectly benefit himself in his business relationship with the agency. In 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 Norgaard insurance agency is interested.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Roland W. Burris".

ROLAND W. BURRIS
ATTORNEY GENERAL