



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 90- 4

The Honorable Sheila Hochhauser
State Representative, Sixty-Seventh District
1636 Leavenworth
Manhattan, Kansas 66502

Re: State Departments; Public Officers and Employees--
Public Officers and Employees; Conflict of
Interest--Definitions; Public Officers and
Employees Prohibited From Making Certain Contracts;
Director of County Community Corrections Program

Synopsis: A conflict of interest will occur when an individual, acting in his capacity as a public employee, participates in the making of a contract with a business in which the individual has a substantial interest. K.S.A. 75-4304. The director of the Riley county community corrections program is a public employee of Riley county, and must be aware that a conflict of interest could occur if the director acts as a public employee in matters regarding the director's electronic surveillance business. However, because the director is not a public employee of the city of Manhattan, Clay county, Geary county or Marshall county, a conflict of interest will not occur in forming contracts between these entities and the director's electronic surveillance business. Cited herein: K.S.A. 75-4301; 75-4304; 75-5295, as amended by L. 1989, ch. 92, § 8; 75-5297, as amended by L. 1989, ch. 92, § 10; L. 1989, ch. 92, § 1.

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Dear Representative Hochhauser:

As Representative of the Sixty-Seventh District, you request our opinion as to whether a potential conflict of interest exists regarding the director of the Riley county community corrections program. The question arises because the director and his spouse own a business which provides the equipment and services for electronic monitoring of criminal defendants awaiting criminal proceedings and convicted individuals on diversion or house arrest. Specifically, you ask whether the following entities could contract with the director for the services his business provides: (1) Riley county; (2) Clay, Geary, or Marshall counties; (3) the city of Manhattan; and (4) private attorneys practicing in Manhattan.

Statutes addressing conflicts of interest are located at K.S.A. 75-4301 et seq. K.S.A. 75-4304 states:

"(a) No public officer or employee shall in his or her capacity as such officer or employee, make or participate in the making of a contract with any person or business by which he or she is employed or in whose business he or she has a substantial interest, and no such person or business shall enter into any contract where any public officer or employee, acting in such capacity, is a signatory to or a participant in the making of such contract and is employed by or has a substantial interest in such person or business. . . ." (Emphasis added.)

The purpose of K.S.A. 75-4304 is to "prohibit self-dealing, i.e., a contract or agreement whereby a public officer or employee, acting in that capacity, participates in the making of a contract with a business in which he has a substantial interest. Thus, a public officer or employee may not be a party to a contract in connection with which he enjoys a dual role, i.e., acting or participating therein in both his public and private capacities." Attorney General Opinion No. 74-269. Therefore, an individual who is subject to a statutory conflict of interest is one who: (1) is a public officer or employee as defined in K.S.A. 75-4301; (2) has a substantial interest in or is employed by a business; and (3) is attempting, as a public officer or employee, to sign or participate in a contractual agreement between the public

entity which employs the individual and the business in which the individual has a substantial interest.

A "public employee" is defined at K.S.A. 75-4301 as "any employee of the state of Kansas or any municipal or quasi-municipal corporation. . . ." The director is employed by the board of county commissioners of Riley county pursuant to the provisions of K.S.A. 75-5295, as amended by L. 1989, ch. 92, § 8. As an employee of a county, the director is an employee of a quasi-municipal corporation and meets the definition of a public employee.

Under K.S.A. 75-4301, "substantial interest" is defined as "the ownership by an individual or his or her spouse, either individually or collectively of a legal or equitable interest exceeding five thousand dollars (\$5,000) or five percent (5%) of any business, whichever is less. . . ." You indicate in your letter that the business providing the electronic monitoring services is a partnership of the director and his spouse. As such, it is clear that the director would have a substantial interest in the business.

While the director of the Riley county community corrections program meets the definition of "public employee" under K.S.A. 75-4301, the director can act in that capacity only in matters relating to Riley county. The director is not an employee of the city of Manhattan, the counties of Clay, Geary or Marshall, or of private attorneys practicing in any of these areas. The director does not have the capacity to contract on behalf of the city, Clay, Geary or Marshall counties, or private attorneys. Because the director could not be engaged in any self-dealing in regard to these entities, a conflict of interest could not occur in contractual matters between the director's business and the city of Manhattan, the counties of Clay, Geary or Marshall, or private attorneys.

In considering contractual relations between the director and Riley county, a different situation occurs. You indicated that the director has authority to form contracts on behalf of Riley county for equipment and services not exceeding \$500. If the director, as a public employee, was to make or participate in making a contract with his business, a conflict of interest would occur. The conflict would exist because the director would be acting as a public official in a matter with a business in which the director has a substantial interest. However, a conflict of interest would be avoided if the "public employee . . . abstains from any action in regard to the contract." K.S.A. 75-4304. In these instances, the

director would not be considered to be one of the public officials or employees making or participating in the making of a contract.

You also indicate that the counties of Clay, Geary and Marshall are interested in pursuing agreements with Riley county for correctional services. Apparently, Geary and Marshall counties would contract for the correctional services under L. 1989, ch. 92, § 1(a)(3) while Clay county would attempt to establish a multi-county community correctional services program under L. 1989, ch. 92, § 1(a)(2). Under such arrangements, Riley county rather than the director would be contracting with the various counties for the services provided under the Riley county community corrections services. The authority of the director to contract is limited to contracting for equipment and services with a value of \$500 or less. The director does not have the authority to develop regional or multi-county community correctional programs. Therefore, the director would not be in a position to act as both a public employee and private businessman in the formation of a contract regarding the correctional services of the Riley county community corrections program and Clay, Geary and Marshall counties. If Clay county does in fact form a regional or multi-county corrections program with Riley county under L. 1989, ch. 92, § 1 and a new advisory board is created as directed by K.S.A. 75-5297, as amended by L. 1989, ch. 92, § 10, the director must be aware that a conflict of interest could occur in matters between the newly formed entity and the director's business. Under such circumstances, the director would be required to avoid participating in the making of a contract between the director's business and the public entity by which is is employed.

Very truly yours,



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