

*Note amendments
to Ch. 105 in 1978*

CONFLICT OF INTEREST:
CITIES, TOWNS AND VILLAGES:
CITY CONTRACTS:
FIRE DEPARTMENTS:

A fourth class city fire chief who sells equipment and services to such city through a company owned in whole or in part by him violates Section 106.300, RSMo 1959, which

prohibits city officers from being directly or indirectly interested in city contracts.

OPINION NO. 44

February 18, 1970

FILED
44

Honorable Jack E. Gant
State Senator - 16th District
9517 East 29th Street
Independence, Missouri 64050

Dear Senator Gant:

This opinion is in response to your question stated as follows:

"Can the Fire Chief of the City of Lake Lotawana sell fire equipment and services to the City of Lake Lotawana from a company in which the Fire Chief holds a financial interest, if said company's bid is the low bidder."

This question requires consideration of two separate sections of our statutes. Section 105.490, RSMo Supp. 1967, of our conflict of interest law provides as follows:

"1. No officer or employee of an agency shall transact any business in his official capacity with any business entity of which he is an officer, agent or member or in which he owns a substantial interest; nor shall he make any personal investments in any enterprise which will create a substantial conflict between his private interest and the public interest; nor shall he or any firm or business entity of which he is an officer, agent or member, or the owner of substantial interest, sell any goods or services to any business entity which is licensed by or regulated in any manner by the agency in which the officer or employee serves.

"2. Any person who violates the provisions

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of this section shall be adjudged guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than five hundred dollars or by confinement for not more than one year, or both."

Also, Section 106.300, RSMo 1959, provides in full as follows:

"If any city officer shall be directly or indirectly interested in any contract under the city, or in any work done by the city, or in furnishing supplies for the city, or any of its institutions, he shall be deemed guilty of a misdemeanor; and any appointed officer becoming so interested shall be dismissed from office immediately by the mayor; and upon the mayor becoming satisfied that any elective officer is so interested, he shall immediately suspend such officer and report the facts to the council, whereupon the council, as soon as practicable, shall be convened to hear and determine the same; and if, by two-thirds vote of the council, he be found so interested, he shall be immediately dismissed from such office."

We are not aware of any attempt by the city to delegate authority to the fire chief to "transact business" for the city, and it is our view that he has no legal authority to transact any business in his capacity as fire chief within the meaning of the first sentence of Section 105.490. The government of such a city is in the mayor and the board of aldermen. The authority to enter into contracts is derived by ordinance. City of Unionville v. Martin, 95 Mo. App. 28, 68 S.W. 605 (1902).

Section 105.490 also prohibits such officer from making any personal investments "in any enterprise which will create a substantial conflict between his private interest and the public interest". Your question does not show any present relationship between the city and the enterprise in which the fire chief has a personal investment; and for that reason and because of the view expressed below, we do not now consider whether such a violation exists.

As can be seen by the quoted provisions of Section 106.300, city officers are prohibited from being directly or indirectly interested in any contract under the city; and there is no provision in Section 106.300 which excepts any city officer from the prohibition for the reason that he has no legal control over the

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making or entering into of the contract.

In determining whether or not the fire chief is a city officer, we note with respect to fourth class cities that Section 79.230, RSMo 1959, provides that the mayor with the consent and approval of the majority of the members of the board of aldermen has the power to appoint certain designated individuals including a street commissioner and night watchman and "such other officers as he may be authorized by ordinance to appoint."

Chapter 79 pertaining to fourth class cities does not contain a definition of officer. However, the St. Louis Court of Appeals in State v. Kelly, 103 Mo. App. 711, 77 S.W. 996 (1903), in interpreting and applying Section 106.300 cited authority stating that an officer is "one who is lawfully invested with an office" and that the test is that "it is a part of the administration of government" and that the term officer "includes all persons in any public station or employment conferred by the government".

It is therefore our view that the fire chief of a city of the fourth class is a city officer within the meaning of Section 106.300 and is prohibited from being directly or indirectly interested in any contract under the city. It is also our view that it makes no difference whether or not the contract represents the lowest bid obtainable.

The question of whether or not such officer is in fact "interested" is a question of fact. In this instance, we understand that the fire chief owns all or a major part of the business involved and, therefore, is unquestionably interested in the contract.

CONCLUSION

It is therefore the opinion of this office that a fourth class city fire chief who sells equipment and services to such city through a company owned in whole or in part by him violates Section 106.300, RSMo 1959, which prohibits city officers from being directly or indirectly interested in city contracts.

The foregoing opinion, which I hereby approve, was prepared by my assistant John C. Klaffenbach.

Very truly yours,



JOHN C. DANFORTH
Attorney General