School Board member bidding on school contracts

Number: AGO 2006-50

Date: December 13, 2006

Subject:
School Board member bidding on school contracts

Ms. Beverly A. Morris
General Counsel
Marion County School Board
808 Southeast Fort King Street
Ocala, Florida 34471

RE: SCHOOL BOARDS–BIDDING–CONFLICT OF INTEREST–school board member's company bidding on school board contracts. s. 1001.42, Fla. Stat.

Dear Ms. Morris:

You ask substantially the following question:

Does section 1001.42(10)(i), Florida Statutes, prohibit the school board from awarding a contract to a corporation in which a school board member is the majority shareholder when the corporation submitted the lowest or best bid under a system of sealed, competitive bidding pursuant to section 112.313(12)(b), Florida Statutes, and otherwise complied with all other requirements of the Florida Code of Ethics for Public Officers and Employees?

According to your letter, a current school board member, prior to his election to the board, had been selling building supplies to the school board pursuant to the award of sealed bids, by purchase order where bids were not required and by direct purchase. Once that member was elected, the Florida Commission on Ethics was contacted regarding this matter. Staff for the commission responded that neither section 112.313(3) nor section 112.313(7), Florida Statutes, was violated by the award of a school board contract to a school board member if the conditions set forth in the "competitive bidding" exemption in section 112.313(12)(b), Florida Statutes, were satisfied.[1] A question, however, has been raised as to whether the provisions of section 1001.42(10)(i), Florida Statutes, would prohibit the school board member's corporation from bidding on contracts with the school board notwithstanding the exemption contained in section 112.313, Florida Statutes.

As noted by the staff of the Commission on Ethics, section 112.313(12)(d) contains an exemption from the prohibitions contained in subsections (3) and (7), regarding doing business with one's agency and with conflicting employment or contractual relationships when the business is awarded under a system of sealed, competitive bidding to the lowest or best bidder and the conditions specified therein are met. The exemption, however, only refers to subsections 112.313(3) and (7).[2]

In setting forth the powers and duties of the district school board, section 1001.42, Florida Statutes, provides in subsection (10)(i) for contracts for materials, supplies, and services needed for the district school system, stating:

"No contract for supplying these needs shall be made with any member of the district school board, with the district school superintendent, or with any business organization in which any district school board member or the district school superintendent has any financial interest whatsoever."

The statute contains no exception or exemptions to its terms and this office cannot read in to the statute any such exemption.[3] While section 112.313, Florida Statutes, applies to state and local entities, including school districts,[4] section 1001.42, Florida Statutes, addresses school districts only. As the more specific statute, it would control.[5]

Accordingly, I am of the opinion that section 1001.42(10)(i), Florida Statutes, prohibits the school board from awarding a contract to a corporation in which a school board member is the majority shareholder even though the corporation submitted the lowest or best bid under a system of sealed, competitive bidding pursuant to section 112.313(12)(b), Florida Statutes, and otherwise has complied with all other requirements of the Florida Code of Ethics for Public Officers and Employees.

Sincerely,

Charlie Crist
Attorney General

CC/tjw

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[1] Letter to Beverly A. Morris, Marion County School Board from C. Christopher Anderson, III, Staff Attorney, Florida Commission on Ethics, dated October 16, 2000. The letter further states that the exemption requires true sealed competitive bidding, with the award going to the lowest or best bidder; requests for proposals or other methods that differ from competitive bidding would render the exemption inapplicable. *And see* CEO 01-1, dated January 30, 2001, stating that a prohibited conflict of interest would be created if building supplies for school board projects were obtained from the school board member's corporation via "direct purchases."

[2] It should be noted that the comments of the commission staff only address the provisions of the Code of Ethics for Public Officers and Employees, Part III, Ch. 112, Fla. Stat.

[3] *See M.W. v. Davis,* 756 So. 2d 90 (Fla. 2000) (when language of statute is clear and unambiguous and conveys a clear and definite meaning, construction of statute must be given its plain and obvious meaning); *McLaughlin v. State,* 721 So. 2d 1170 (Fla. 1998); *In re Order on Prosecution of Criminal Appeals by Tenth Judicial Circuit Public Defender*, 561 So. 2d 1130 (Fla. 1990) (best evidence of intent of Legislature is generally plain meaning of statute).

[4] *See* s. 112.312(2), Fla. Stat., defining "Agency" for purposes of Part III, Ch. 112, Fla. Stat., and Art. II, s. 8, Fla. Const., "means any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state therein; or any public school, community college, or state university."

[5] *See generally McKendry v. State,* 641 So. 2d 45 (Fla. 1994); *Gretz v. Florida Unemployment Appeals Commission*, 572 So. 2d 1384 (Fla. 1991) (specific statute stating no fee for transcript preparation in unemployment compensation appeals controls over general statute requiring agency to provide transcripts at actual cost); *Barnett Banks, Inc. v. Department of Revenue,* 738 So. 2d 502 (Fla. 1st DCA 1999).