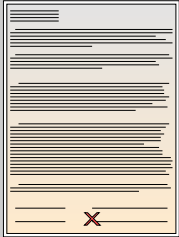


PROHIBITED CONTRACTUAL ARRANGEMENTS

A summary of the restrictions concerning contractual relationships contained in Louisiana's Code of Governmental Ethics



Louisiana Board of Ethics
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Information Sheet #4

Section 1113 of the Code of Governmental Ethics (LSA - R.S. 42:1113) prohibits public servants and their family members from entering into certain transactions. The purpose of this information sheet is to outline the restrictions and dismiss some common misconceptions regarding §1113 of the Code. The rules as to legislators contracting with state agencies are **not** covered in this information sheet.

GENERAL PROVISIONS OF §1113

- **No elected official* or public employee or member of such public servant's immediate family, or legal entity in which he has a controlling interest shall bid on or enter into any contract, subcontract, or other transaction that is under the supervision or jurisdiction of the public servant's agency.**

*There are exclusions for a member of a governing authority of a parish with a population of 10,000 or less. Also, municipalities with a population of 5,000 or less may be able to take advantage of an exception contained in §1123(22) of the Code, described later.

Section 1102(13) of the Code defines "immediate family," as it relates to a public servant as follows:

1. his children
2. the spouses of his children (daughters-in-law and sons-in-law)
3. his brothers and sisters
4. the spouses of his brothers and sisters (*added by 1999 legislative amendment*)
5. his parents
6. his spouse
7. the parents of his spouse (mother-in-law and father-in-law)



Section 1102(2) of the Code defines "agency" to be a department, division, agency, commission, board, committee, or other organizational unit of a governmental entity.

Section 1102(8) of the Code defines "controlling interest" as any ownership interest in any legal entity or beneficial interest in a trust, held by or on behalf of an individual or a member of his immediate family, either individually or collectively, which exceeds 25% of that legal entity.



Example #1: An employee of the Department of Social Services, Office of Community Services in Caddo Parish, is a board certified social worker. In her spare time, she operates a computer company, Reliable Computers, Inc., with her husband. Her husband does most of the work relating to the computer company. The Department decides that it needs 50 new computers for the Baton Rouge and New Orleans offices to help it meet its increased responsibilities in those areas. To purchase the computers, the Department solicits bids and will purchase the computers from the lowest bidder. The social worker and her husband decide that their computer company should submit a bid. May Reliable Computers, Inc. submit a bid for the contract to supply 50 new computers to the Department?

Answer: Yes. The Board has generally applied the definition of “agency” in a restricted manner and would therefore likely say that the social worker’s agency is only the Caddo Parish Office of Community Services. This being the case, the entire Department is not her agency and Reliable Computers, Inc. is not prohibited from submitting a bid on a contract with the Department. If on the other hand, the contract was with the Caddo Parish Office of Community Services and the computers were designated to go to that office, then Reliable Computers, Inc. would be prohibited from submitting a bid on that contract.

Example #2: A local school board decides that the area high school needs a new gymnasium. A company owned by the three brothers and two sisters of a school board member, with each sibling having a 20% ownership interest in the company, wants to build the new gymnasium. May the company submit a bid to build the new gymnasium?

Answer: No. Brothers and sisters are considered members of a public servant’s immediate family and since the five siblings collectively own 100% of the business, the business is prohibited from submitting a bid.



- **No appointed member of any board or commission, member of his immediate family, or legal entity in which he has a substantial economic interest shall bid on or enter into or be in any way interested in any contract, subcontract, or other transaction which is under the supervision or jurisdiction of agency of the appointed member.**



Example #3: The members of the local drainage and sewage board (board) are appointed by the mayor and the town council. On the agenda for the board’s consideration is a proposal to remove some dirt from a 500-acre tract of land near the area levee which will improve the drainage for about 5 miles along the levee. The removal of this dirt will dramatically increase the value of this 500-acre tract. However, the improved drainage will benefit approximately 100 residents in the area. The tract of land at issue just happens to belong to one of the members of the board. This board member did not know this proposal was going to be made and did not vote on the issue at the board meeting. May the board remove the dirt from this board member’s land?

Answer: The Ethics Code does not apply to public entities. As the local drainage and sewage board is a public entity, §1113B could not prohibit the board from removing the dirt. However, §1113B would prohibit the landowner from being in any way interested in the dirt being removed by the board. There are only two ways to solve this problem, the board member would either have to divest himself of the 500 acres BEFORE the board removed the dirt or he could resign from the board.

COMMON MISCONCEPTIONS

One common misconception about §1113 is that if a person is the lowest bidder on a project, then that person can have the job. This is simply not the case. The prohibition includes **bidding** on a contract, as well as entering into a contract.

Another common misconception regarding §1113 is that if there are no other persons in the area who can provide the goods or services needed by the governmental agency, then the prohibition should not apply. However, this is not the case except for the narrow exception below. Many other people believe that if the job is not going to yield a big profit for the person doing it, then it is O.K. for the person to do the work, regardless of who that person is. This too is not correct. The amount of profit to be gained, or not gained, is irrelevant if you are one of the prohibited persons.

NARROW EXCEPTION FOR SMALL CITIES

A mayor or a member of a governing authority of a municipality with a population of 5,000 or less may enter into transactions with the municipality, if the municipality develops a plan describing how such transactions will occur. The plan must be approved by the Ethics Board before any transactions take place.



The Board encourages public servants to seek advice from the Board as to how the law applies to their own situations by submitting a written request for an advisory opinion. Advisory opinions are not issued as to past conduct, but can provide crucial advice on how to avoid problems in the future. If you wish to obtain an advisory opinion, please send your request to the above address. In addition, our staff is available for informal advice at (225) 219-5600 or 1-800-842-6630. The Board has a web site located at: www.ethics.state.la.us

This information sheet is only a summary of the prohibited contractual arrangements provision contained in §1113 of the Code of Governmental Ethics. If interpretations of this fact sheet conflict with provisions of the Code, the Code will control.