

OPINION NO. 68-111

Syllabus:

1. The board of trustees of a regional airport authority may not contract with a corporation to operate the airport if a member of the board of trustees owns stock in the corporation.

2. Section 308.04, Revised Code, prohibits a member of a board of trustees of a regional airport authority from having an interest in a contract of the regional airport authority and a provision that a contract with the regional airport authority should be let only after competitive bidding does not affect the prohibition of that section.

To: Marshall E. Peterson, Greene County Pros. Atty., Xenia, Ohio
By: William B. Saxbe, Attorney General, July 9, 1968

Your opinion request raises the following questions:

(1) May the board of trustees of a regional airport authority contract with a corporation to operate the airport if a member of the board of trustees owns stock in the corporation?

(2) Would the answer to question number one be affected if the contract were let only after competitive bidding?

Section 308.04, Revised Code, provides in part:

"Each member of the board of trustees, before entering upon his official duties, shall take and subscribe to an oath or affirmation that he will honestly, faithfully, and impartially perform the duties of his office, and that he will not be interested directly or indirectly in any contract let by the regional airport authority."

(Emphasis added)

There have been no decisions construing Section 308.04, supra; however, the phrase "interested in a contract" has been used in other sections of the code. The construction given to that phrase in other sections of the code is relevant to the construction that should be given it as used in Section 308.04, supra. A member of a board of trustees who owns stock in a corporation contracting with that board of trustees is interested in a contract within the meaning of Section 308.04, supra. Opinion No. 474, Opinions of the Attorney General for 1917, Vol. II, page 1293 and Opinion No. 51, Opinions of the Attorney General for 1959, page 29.

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"* * * To permit those holding offices of trust or profit to become interested in contracts for the purchase of property for the use of the state, county, or municipality of which they are officers, might encourage favoritism, and fraudulent combinations and practices, not easily detected, and thus make such officers, charged with the duty of protecting those whose interests are confided to them, instruments of harm. The surest means of preventing this, was to prohibit all such contracts; and the legislature having employed language sufficiently clear and comprehensive for this purpose, there is no authority in the courts under the pretext of construction to render nugatory the positive provisions of the statute. * * *

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Doll v. The State, 45 Ohio St. 445, 449 (1887).

Section 305.27, Revised Code, prohibits county commissioners from being interested in contracts of the county. The second paragraph of that section provides that the section does not apply where a commissioner, being a shareholder of a corporation but not an officer or director, owns not in excess of five per cent of the stock of such corporation and the value of the stock so owned does not exceed five hundred dollars. This statutory exemption is an implicit recognition by the General Assembly that ownership of stock in a corporation by a county commissioner is sufficient to constitute an interest by that commissioner in the contracts of that corporation. There is no analogous exemption in Section 308.04, supra.

In answer to your second question I refer you to Opinion No. 51, Opinions of the Attorney General for 1959, page 29. At page 32 of that opinion a question similar to yours, but relevant to another section of the code was asked. In that opinion one of my predecessors in office indicated the relevance of the exempting provision of Section 2919.09, Revised Code, which permits a public official to have an interest in a contract where the contract is let on a public bid basis. Since no such exemption was found in the section under consideration in that opinion (Section 2919.09, Revised Code), it was held that the letting of contracts on public bids did not relieve officers from legal liability and the contract from invalidity.

There is no provision in Section 308.04, supra, exempting those who have an interest in a contract from the operation of the second paragraph of that section where a contract is let on a competitive bid basis.

Therefore, it is my opinion and you are accordingly advised that:

1. The board of trustees of a regional airport authority may not contract with a corporation to operate the airport if a member of the board of trustees owns stock in the corporation.

2. Section 308.04, Revised Code, prohibits a member of a board of trustees of a regional airport authority from having an interest in a contract of the regional airport authority and a provision that a contract with the regional airport authority should be let only after competitive bidding does not affect the prohibition of that section.