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DELIVERY OF GRAVEL TO A TOWNSHIP DOES NOT CONSTITUTE "WORK UNDERTAKEN OR PROSECUTED BY THE TOWNSHIP" AND A BOARD OF TOWNSHIP TRUSTEES MAY ENTER INTO A CONTRACT TO PURCHASE GRAVEL FROM A FIRM WHICH HAS IN ITS EMPLOY A FORMER MEMBER OF THE BOARD WHO RESIGNED WITHIN THE PAST MONTH—§2919.10, R.C.

SYLLABUS:

1. The provision of Section 2919.10, Revised Code, that no member of a board of township trustees shall be interested in the profits of a contract, job, work, or services for the township applies only to a person who is actually serving on the board at the time the contract, job, work, or services is entered into; but, under such section, no member may act as commissioner, architect, superintendent, or engineer, in work undertaken or prosecuted by the township during the term for which he was elected or appointed, or for one year thereafter.

2. The delivery of gravel to a township does not constitute "work undertaken or prosecuted by the township" within the purview of Section 2919.10, Revised Code, and a board of township trustees may enter into a contract to purchase gravel from a firm which has in its employ, as foreman, a former member of the board who resigned within the past month, such not being in violation of the provisions of that section.

Columbus, Ohio, March 17, 1961

Hon. Homer B. Gall, Jr., Prosecuting Attorney
Athens County, Athens, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“May a Board of Township Trustees purchase gravel from a firm which has in its employ as foreman a former member of the Board of Township Trustees who has resigned from the board within the past month, or is this a violation of the one year provision of Section 2919.10 of the Revised Code prohibiting a Trustee from having an interest in a contract, job, work or service for one year after leaving the board?”

Section 2919.10, Revised Code, reads in part as follows :

“No officer of a municipal corporation or member of the council thereof or a member of a board of township trustees, shall be interested in the profits of a contract, job, work, or services for such municipal corporation or township, or act as commissioner, architect, superintendent, or engineer, in work undertaken or prosecuted by such municipal corporation or township during the term for which he was elected or appointed, or for one year thereafter, or become the employee of the contractor of such contract, job, work, or services while in office. * * *”

In this case the person concerned would not be a member of the board of township trustees at the time the contract is entered into. Presumably, however, the contract would be entered into during the term for which he was elected or appointed, or within the year after said term expires. In this regard, it will be noted that, although the member resigned, the term for which he was elected or appointed constitutes a certain period which ends on a definite date, irrespective of whether the member resigned or not.

The first question to decide is whether the words “during the term for which he was elected or appointed, or for one year thereafter” apply to the words “no * * * member of a board of township trustees, shall be interested in the profits of a contract * * *”; and in considering this question, it would appear advisable to review past interpretations of the subject.

A reading of the history of Section 2919.10, *supra*, indicates that it was originally enacted as section 92 of the Municipal Code of 1869, 66 Ohio Laws, 164 and read as follows:

“Sec. 92. No member of the council or any officer of the corporation shall be interested, directly or indirectly, in the profits of any contract, job, work, or services, (other than official services to be performed for the corporation,) nor shall any member or officer act as commissioner, architect, superintendent or engineer in any work undertaken or prosecuted by the corporation during the term for which he was elected or appointed, or for one year thereafter.* * *”

Section 92, as above quoted, was codified in the Revised Statutes of 1880 in practically the same form and was thereafter re-codified in the General Code as Section 12912 which stated in part as follows:

“Whoever, being an officer of a municipal corporation or member of the council thereof or the trustee of a township, is interested in the profits of a contract, job, work or services for such corporation or township, or acts as commissioner, architect, superintendent or engineer, in work undertaken or prosecuted by such corporation or township during the term for which he was elected or appointed, or for one year thereafter, * * *.”

On page 1033 of the Opinions of the Attorney General for the years 1910-11, in interpreting Section 12912, *supra*, it is stated:

“It is a familiar principle of statutory construction that the re-enactment of a statute for the purpose of codification and revision is presumed not to change the meaning thereof. If then the original act indicates one of several possible meanings of the revised act, that meaning must be given to the latter. It will be noted with respect to the original act that the subject ‘no member of the council or any officer of the corporation’ is repeated; in fact, the entire structure of the original section indicates clearly that the portion thereof which follows the parenthesis is absolutely separate and distinct from that which precedes, and that it would have been proper grammatically to have placed a period at the division point. This conclusion eliminates one of the possible meanings suggested by you, and indicates clearly that the phrase ‘during the term for which he was elected or appointed, or for one year thereafter’ does not modify the verb ‘is interested.’”

Former Section 12912, General Code, was re-codified as Section 2919.10, Revised Code, in the general code revision of 1953. In such

code revision the intent was to make no substantive changes (Section 1.24, Revised Code), and I do not believe that any such change was made. In considering the present language, therefore, I believe that the reasoning of my predecessors, as disclosed above, may be applied to said present language. Looking at this language, it appears to me that if the intent had been to apply the "in term" and "one year" restrictions to the earlier language, a comma would have been inserted after the words "by such corporation or township"—in both Section 12912, General Code, and Section 2919.10, Revised Code. Without such a comma, such restrictions appear to apply only to the job classifications enumerated in the statute, namely, commissioner, architect, superintendent or engineer.

As to whether the person concerned may be considered a commissioner, architect, superintendent or engineer, within the statute, it will be noted that the member of the board is precluded from acting in such capacity *in work undertaken or prosecuted* by the township during the term for which he was elected or appointed, or for one year thereafter. In view of the use of the words "in work undertaken or prosecuted" it would appear that the restriction applies to acting in such capacity in a township improvement or work of some kind; that is, a road improvement, building construction or improvement, or related improvement. In the instant case, the firm for which the former member works will furnish gravel under the contract but will apparently *not* undertake or prosecute *work* for the township. Accordingly, I do not believe that the statute precludes the person in question from acting as foreman for the firm which will furnish gravel to the township.

Answering your specific question, therefore, it is my opinion and you are advised:

1. The provision of Section 2919.10, Revised Code, that no member of a board of township trustees shall be interested in the profits of a contract, job, work, or services for the township applies only to a person who is actually serving on the board at the time the contract, job, work, or services is entered into; but, under such section, no member may act as commissioner, architect, superintendent, or engineer, in work undertaken or prosecuted by the township during the term for which he was elected or appointed, or for one year thereafter.

2. The delivery of gravel to a township does not constitute "work undertaken or prosecuted by the township" within the purview of Sec-

tion 2919.10, Revised Code, and a board of township trustees may enter into a contract to purchase gravel from a firm which has in its employ, as foreman, a former member of the board who resigned within the past month, such not being in violation of the provisions of that section.

Respectfully,

MARK McELROY

Attorney General