

**OPINION NO. 82-008****Syllabus:**

The provision of R.C. 511.13 which prohibits members of the board of township trustees and officers or employees of a township from having an interest in contracts entered into by the board of township trustees applies to any contract entered into by such board, unless the interested person meets the criteria for a permissible interest set forth in this section.

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**To: Peter R. Selbel, Defiance County Prosecuting Attorney, Defiance, Ohio**  
**By: William J. Brown, Attorney General, March 1, 1982**

I have before me your request for an opinion which reads:

My question to you as it relates to the situation wherein a Township Clerk is reimbursed for the use of his home as a township meeting place when there is no other place available to the township is: Does Ohio Revised Code §511.13 apply to any interest in a contract other than memorial buildings or is the controlling guideline for an unlawful interest in a public contract Ohio Revised Code §2921.42?

As you noted in your letter, R.C. 2921.42 is the criminal statute which proscribes unlawful interests in public contracts generally. The statute reads as follows:

- (A) No public official shall knowingly do any of the following:
  - (1) Authorize, or employ the authority or influence of his office to secure authorization of any public contract in which he, a

member of his family, or any of his business associates has an interest;

(2) Authorize, or employ the authority or influence of his office to secure the investment of public funds in any share, bond, mortgage, or other security, with respect to which he, a member of his family, or any of his business associates either has an interest, is an underwriter, or receives any brokerage, origination, or servicing fees;

(3) During his term of office or within one year thereafter, occupy any position of profit in the prosecution of a public contract authorized by him or by a legislative body, commission, or board of which he was a member at the time of authorization, and not let by competitive bidding, or let by competitive bidding in which his is not the lowest and best bid;

(4) Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which he is connected;

(5) Have an interest in the profits or benefits of a public contract which is not let by competitive bidding when required by law, and which involves more than one hundred fifty dollars.

(B) In the absence of bribery or a purpose to defraud, a public servant, member of his family, or any of his associates shall not be considered as having an interest in a public contract or the investment of public funds, when all of the following apply:

(1) The interest of such person is limited to owning or controlling shares of the corporation, or being a creditor of the corporation or other organization, which is the contractor on the public contract involved, or which is the issuer of the security in which public funds are invested;

(2) The shares owned or controlled by such person do not exceed five per cent of the outstanding shares of the corporation, and the amount due such person as creditor does not exceed five per cent of the total indebtedness of the corporation or other organization;

(3) Such person, prior to the time the public contract is entered into, files with the political subdivision or governmental agency or instrumentality involved, an affidavit giving his exact status in connection with the corporation or other organization.

(C) This section does not apply to a public contract in which a public servant, member of his family, or one of his business associates has an interest, when all of the following apply:

(1) The subject of the public contract is necessary supplies or services for the political subdivision or governmental agency or instrumentality involved;

(2) The supplies or services are unobtainable elsewhere for the same or lower cost, or are being furnished to the political subdivision or governmental agency or instrumentality as part of a continuing course of dealing established prior to the public servant's becoming associated with the political subdivision or governmental agency or instrumentality involved;

(3) The treatment accorded the political subdivision or governmental agency or instrumentality is either preferential to or the same as that accorded other customers or clients in similar transactions;

(4) The entire transaction is conducted at arm's length, with full knowledge by the political subdivision or governmental agency or instrumentality involved, of the interest of the public servant, member of his family, or business associate, and the public servant takes no part in the deliberations or decision of the political subdivision or governmental agency or instrumentality with respect to the public contract.

(D) Whoever violates this section is guilty of having an unlawful interest in a public contract. Violation of division (A)(1) or

(2) of this section is a felony of the fourth degree. Violation of division (A)(3), (4), or (5) of this section is a misdemeanor of the first degree.

(E) As used in this section, "public contract" means any of the following:

(1) The purchase or acquisition, or a contract for the purchase or acquisition of property or services by or for the use of the state or any of its political subdivisions, or any agency or instrumentality of either;

(2) A contract for the design, construction, alteration, repair, or maintenance of any public property.

The statute does not prohibit all interests in public contracts. R.C. 2921.42(B) and (C) provide exceptions to the application of the general statutory prohibition contained in R.C. 2921.42(A). You have indicated that the contract entered into by the township clerk in question may come within the exception enumerated in R.C. 2921.42(C).

R.C. 511.13 concerns conflicts of interest in township contracts and reads as follows:

No member of the board of township trustees or any officer or employee thereof shall be interested in any contract entered into by such board. No such person shall be individually liable to any contractor upon any contract made under sections 511.08 to 511.17, inclusive, of the Revised Code, nor shall he be liable to any person on any claims occasioned by any act or default of a contractor or anyone employed by him.

This section does not apply where such person is a shareholder of a corporation, but not an officer or director thereof, and owns not more than five per cent of the stock of such corporation, the value of which does not exceed five hundred dollars.

If a stockholder desires to avail himself of the exception provided in this section, he shall, before entering upon such contract, first file with the clerk of the board of county commissioners, an affidavit, stating his exact status and connection with the corporation. (Emphasis added.)

Clearly, an individual elected to the office of township clerk is an "officer" of the township. See generally R.C. 507.01 (election of township clerk). R.C. 511.13 is, therefore, applicable to township clerks. The statute stipulates that, apart from the exception established in the last two paragraphs, these officers shall not be interested in "any contract" entered into by the board of township trustees. It is a well-settled rule of statutory construction that one may not disregard any language used in a statute. Carter v. City of Youngstown, 146 Ohio St. 203, 207, 65 N.E.2d 63, 65 (1946). One must consider that the legislature purposely drafted the language in the form in which it was enacted, and determine the legislative intent from the language used. Batchelor v. Newness, 145 Ohio St. 115, 120, 60 N.E.2d 685, 687 (1945). Thus, the phrase "any contract" cannot be ignored when determining the scope of R.C. 511.13. In addition, the word "any" must be given its ordinary meaning when construing this provision. Motor Cargo, Inc. v. Board of Township Trustees, 52 Ohio Op. 257, 259, 117 N.E.2d 224, 227 (Summit County 1953) ("[i]n construing statutes the word 'any' is equivalent and has the force of 'every' or 'all' "). See also Davis v. Halter, 79 Ohio App. 419, 422, 74 N.E.2d 207, 209 (Stark County 1944) (statutory language must be given its plain meaning).

Your letter suggests that R.C. 511.13 may be applicable only to those public contracts which deal with memorial buildings. This interpretation of the statute may find support either in the placement of R.C. 511.13 among other statutory provisions largely concerned with memorial buildings, or in the fact that the pertinent portion of R.C. 511.13, quoted above, was originally enacted as G.C. 3410-8

by Section 8 of Am. S.B. No. 112, 1919 Ohio Laws, Part I 542, 545. The title to Am. S.B. No. 112 indicated that the act was designed to enable townships to construct memorial buildings. However, as stated in State ex rel. Grant v. Kiefaber, 114 Ohio App. 279, 293, 181 N.E.2d 905, 915 (Montgomery County) aff'd, 171 Ohio St. 326, 170 N.E.2d 848 (1960), "it is well understood that the scope of the operation or applicability of a statute is not limited or prescribed by the stated object or purpose prompting its enactment." It is similarly understood that the placement of a statute may serve as an aid when construing ambiguous statutory language, but is not determinative of the scope or purpose of the provision. See In re Kline, 6 Ohio C.C. 215, 216 (Franklin County 1892); 1981 Op. Att'y Gen. No. 81-083. A longstanding rule of statutory construction requires that one look to the meaning of the words plainly written in a statute, rather than question what the legislature intended to enact. Slingluff v. Weaver, 66 Ohio St. 621, 64 N.E. 574 (1902). The initial sentence of R.C. 511.13 clearly states that township officers shall not have an interest in "any contract" entered into by the board of township trustees. The legislature was capable of narrowing the scope of the statutory provision to specific types of contracts when it so desired. The second sentence of R.C. 511.13, quoted above, demonstrates this capability. The liability prohibited therein is limited to liability upon those contracts made under R.C. 511.08 to R.C. 511.17. It is, therefore, clear that the phrase "any contract" must be determinative of the scope of application of R.C. 511.13 to prohibited interests in public contracts.

It must also be noted that other township contracts, which did not concern memorial buildings, have been found to fall within the parameters of R.C. 511.13. See 1959 Op. Att'y Gen. No. 51, p. 29, 30 (citing, inter alia, R.C. 511.13 and advising that a township contract to purchase gravel from a company which paid royalties on the sale of gravel to a township trustee would be prohibited); 1949 Op. Att'y Gen. No. 1284, p. 91 (citing, inter alia, G.C. 3410-8, subsequently R.C. 511.13, and advising that a township trustee would be disqualified from voting on a contract to purchase a maintainer from one who employed the trustee).

Similar statutes prohibiting conflicts of interest in public contracts are directed to public officers at the village, city and county levels. R.C. 731.12 (members of village legislative authority); R.C. 731.02 (members of city legislative authority); R.C. 305.27 (county commissioners). These statutes are the legislative expression of longstanding legal and ethical principles which forbid a public official, as an agent of the public, from dealing with or for himself, directly or indirectly. See State ex rel. Taylor v. Pinney, 13 Ohio Dec. 210, 211-12 (Franklin County Common Pleas 1902). This idea is also expressed in R.C. 102.03(D), which reads:

(D) No public official or employee shall use or attempt to use his official position to secure anything of value for himself that would not ordinarily accrue to him in the performance of his official duties, which thing is of such character as to manifest a substantial and improper influence upon him with respect to his duties.

R.C. 511.13 provides an exception to its general prohibition only in those situations where the township officer in question is neither an officer nor a director of a corporation which is to be party to a proposed public contract, but is merely a shareholder of less than five percent of the corporation's stock, the value of which does not exceed five hundred dollars. Your letter does not indicate that the township clerk could come within this exception.

As previously stated, there is also a criminal statute, R.C. 2921.42, which prohibits conflicts of interest in public contracts. The criminal statute applies to all public officials, including township trustees, officers, and employees, as well as employees, officers, and agents of other political subdivisions, some of whom are forbidden to have interests in public contracts under statutory provisions analogous to R.C. 511.13. See R.C. 2921.01(A) (defining public official). See also R.C. 305.27, 731.02, 731.12 (prohibiting conflicts of interest in public contracts by certain public

officers of counties, cities and villages). R.C. 2921.42, quoted above, permits a number of exceptions to the applicability of its penal provisions.

The difference between R.C. 511.13 and R.C. 2921.42 may be explained by the differing nature and purpose of the two statutes. R.C. 2921.42 is part of the Criminal Code. The legislature did not wish to impose penal sanctions under R.C. 2921.42 for dealings in which the public officials' personal interest would be very remote or clearly aboveboard. Committee Comment, Am. H.B. No. 511, 109th Gen'l Assembly (1972). In contrast, R.C. 511.13 is a remedial statute. See State ex rel. National Mutual Insurance Co. v. Conn, 115 Ohio St. 607, 620, 155 N.E. 138, 142 (1927) (a statute which safeguards the public interests or remedies a public evil is a remedial statute); In re Arnold, 8 Ohio N.P. 112, 115 (Hamilton County Common Pleas 1900), rev'd on different grounds sub nom. Board of County Commissioners v. Arnold, 65 Ohio St. 479, 63 N.E. 89 (1902) (remedial statutes have for their object the introduction of some regulation conducive to the public good). Like other statutes which forbid public officers to have an interest in public contracts, R.C. 511.13 is intended to introduce a regulation which will safeguard the public interest. Cf. Doll v. State, 45 Ohio St. 445, 449, 15 N.E. 293, 295 (1887) ("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. . . . The surest means of preventing this, was to prohibit all such contracts. . ."). Thus, it appears that R.C. 511.13 provides a broader prohibition than R.C. 2921.42, although it provides no criminal sanctions.

It is, therefore, my opinion, and you are advised, that the provision of R.C. 511.13 which prohibits members of the board of township trustees and officers or employees of a township from having an interest in contracts entered into by the board of township trustees applies to any contract entered into by such board, unless the interested person meets the criteria for a permissible interest set forth in this section.