



Illinois Department of Transportation

Division of Highways / Region 3 / District 5
13473 IL Highway 133 / P.O. Box 610 / Paris, Illinois / 61944
Telephone 217/465-4181

January 16, 2013

Mr. Kirk Allen
Edgar County Watchdogs
P O Box 593
Kansas, IL 61933

Re: FOIA request 0109131

Dear Mr. Allen:

The Department has reviewed your request dated January 9, 2013 for "copies of ALL written or typed correspondence, if any, created by anyone in Region 3 and provided to the Edgar County Board, Edgar County States Attorney, Edgar County Highway Engineer, and/or the Edgar County Clerk. The time frame identified for this requested correspondence is anything in the last 14 days. The primary subject matter would be the issue of the Chris Patrick, Edgar County Chairman and the conflict of interest issue with his ownership of Zimmerly Ready Mix although this request will apply to any other correspondence with those offices outlined."

The request is granted with a copy of the documentation enclosed.

Very truly yours,

Joseph E. Crowe, P.E.
Deputy Director of Highways
Region Three Engineer

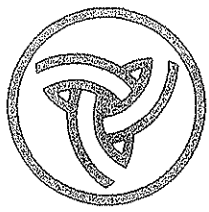
By *Lugene Joines*

Lugene Joines
Personnel Services Mgr.
District 5 FOIA Officer

LJ/lk

Attachments

File



Illinois Department of Transportation

Division of Highways / Region 3 / District 5
13473 IL Highway 133 / P.O. Box 610 / Paris, Illinois / 61944
Telephone 217/465-4181

January 4, 2013

Edgar County Board Members
115 West Court Street – Room J
Paris, Illinois 61944

Re: Conflict of Interest

Dear Board Members:

On Tuesday, December 11, 2012, Mr. Scott Lackey, District 5 Acting Local Roads Engineer, contacted Mr. August Griffin, Edgar County Clerk, and expressed the District's concern with a potential conflict of interest of an Edgar County board member due to their potential financial interest in highway improvements for the County. Mr. Lackey provided Mr. Griffin with documentation that he felt should be reviewed and addressed by the County Board.

On Thursday, December 13, 2012, Mr. Chris Patrick, Edgar County Board Chairman, and Mr. Aaron Lawson, Edgar County Highway Engineer, contacted Mr. Lackey in his office. A conference call was conducted that included Mr. Chris Greeson, District 5 Local Roads Field Engineer. Mr. Patrick inquired about the form he needed to fill out as referenced in the next to last sentence of the Code of Federal Regulations Title 23 CFR 1.33 so he could openly disclose to the public his affiliation with a company that may bid and/or supply material for highway improvements for the County. Mr. Lackey indicated he was not aware of such a form and was not sure that it would address the potential conflict of interest. Mr. Lackey indicated he would have to contact the Federal Highway Administration (FHWA) since it was a federal regulation.

On Friday, December 14, 2012, Mr. Patrick contacted Mr. Lackey by phone. Mr. Patrick inquired if the District had found the document he needed to fill out as outlined in the regulation. Mr. Lackey indicated he did not agree with Mr. Patrick's interpretation of the regulation but had a call into representatives with the FHWA's office in Springfield. Mr. Patrick indicated that he wanted to address this issue as soon as possible. Mr. Lackey recommended that he contact the Edgar County State's Attorney's office for clarification of the regulation and Chapter 50 of the State's Road and Bridge Laws. Mr. Patrick indicated that Mr. Lackey brought this to the attention of the County Board and therefore, he should provide the guidance on how to address the issue.

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January 4, 2013

On Monday, December 17, 2012, the District requested that the FHWA's Division Office in Springfield provide clarification regarding Code of Regulation Title 23 CFR 1.33 "Conflict of Interest" based on Mr. Patrick's potential financial interest in highway improvements for Edgar County.

On Tuesday, December 18, 2012, the District requested that the Illinois Department of Transportation's Office of Chief Council (OCC) provide clarification regarding Illinois Compiled Statute 50 ILCS 105/3 "Prohibited Interest in Contracts" based on Mr. Patrick's potential financial interest in highway improvements for Edgar County.

The District has received responses from both the FHWA and IDOT's OCC. Both offices concurred that Mr. Patrick's participation on the County Board is a potential conflict of interest in accordance with both Federal and State regulations/laws. To be in compliance, a recusal by Mr. Patrick from participation in all discussions and approval of any federal and/or state funded County or Township highway improvement in which he would have a direct or indirect financial or other personal interest in the improvement would be required. The only exception would be if Mr. Patrick would publicly indicate that any company for which he would have direct or indirect involvement would not compete for work associated with the improvement.

The FHWA and OCC require that Mr. Patrick provide a recusal letter to be placed in the files of IDOT's District 5, the Edgar County Clerk, the Edgar County State's Attorney, and the FHWA. Based on recommendations from IDOT's OCC the District has determined the recusal letter include the following statement:

"In my capacity as a member of the Edgar County Board, I recuse myself from making any decisions, participating in any vote or participating in the award or execution relative to any highway or local road construction or maintenance contract that is or will be financed in whole or in part with state or federal funds."

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We appreciate the Board's cooperation with this matter and look forward to working with the Board and the employees of the County's Highway Department to improve highways in Edgar County. Should you have any questions please contact Mr. Scott Lackey, District 5 Acting Local Roads and Streets Engineer at (217)466-7252.

Very truly yours,



Joseph E. Crowe, P.E.
Deputy Director of Highways,
Region Three Engineer

SAL/als

Attachments:

1. Code of Regulations Title 23 CFR 1.33
2. ILCS 50 ILCS 105/3
3. FHWA letter dated December 20, 2012

cc: Mr. Scott McGuire, FHWA Illinois Division, Springfield, IL
Mr. Bruce Harmening, IDOT Office of Chief Council, Springfield, IL
Mr. Chris Patrick, Chairman, Edgar County Board
Mr. August Griffin, Edgar County Clerk
Mr. Mark Isaf, Edgar County State's Attorney

§ 1.33

23 CFR Ch. I (4-1-11 Edition)

(4) Joint Interagency Orders and Notices are used by FHWA and the National Highway Traffic Safety Administration (NHTSA) to issue joint policies, procedures, and information pertaining to the joint administration of the State and Community Highway Safety Program. Where necessary, other joint directives may be issued with other modal administrations within the Department of Transportation.

(5) Manuals are generally designed for use in issuing permanent or long-lasting detailed policy and procedure. Some of the major manuals recognized by the FHWA Directives System follow:

(i) The Federal-Aid Highway Program Manual has been established to assemble and organize program material of the type previously contained in the Policy and Procedure and Instructional Memoranda which will continue in effect until specifically revoked or published in the new manual. Regulatory material is printed in italics in the manual and also appears in this code. Nonregulatory material is printed in delegate type.

(ii) The Administrative Manual covers all internal FHWA administrative support functions.

(iii) The Highway Planning Program Manual covers the methods and procedures necessary to conduct the highway planning functions.

(iv) The Research and Development Manual series entitled, "The Federally Coordinated Program of Research and Development in Highway Transportation" describes the FHWA research and development program.

(v) The External Audit Manual provides guidance to FHWA auditors in their review of State programs and processes.

(vi) The Civil Rights and Equal Opportunity Manual provides guidance to FHWA and State Civil Rights and Equal Employment Opportunity Officers.

(vii) The BMCS Operations Manual provides program guidance for all field employees assigned to the motor carrier safety program.

(viii) The Highway Safety Program Manual, issued jointly by FHWA and NHTSA, contains volumes relating to

the joint administration of the program.

(6) Handbooks are internal operating instructions published in book form where, because of the program area covered, it is desirable to provide greater detail of administrative and technical instructions.

(7) Transmittals identify and explain the original issuance or page change, provide background information, and provide filing instructions for insertion of new pages and removal of changed pages, or both.

(49 U.S.C. 1655)

[39 FR 1512, Jan. 10, 1974]

§ 1.33 Conflicts of interest.

No official or employee of a State or any other governmental instrumentality who is authorized in his official capacity to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract. No engineer, attorney, appraiser, inspector or other person performing services for a State or a governmental instrumentality in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than his employment or retention by a State or other governmental instrumentality, in any contract or subcontract in connection with such project. No officer or employee of such person retained by a State or other governmental instrumentality shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of the State highway department and of such other governmental instrumentality, and such officer, employee or person has not participated in such acquisition for and in behalf of the State. It shall be the responsibility of the State to enforce the requirements of this section.

Illinois Compiled Statutes

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Information maintained by the Legislative Reference Bureau
Updating the database of the Illinois Compiled Statutes (ILCS) is an ongoing process. Recent laws may not yet be included in the ILCS database, but they are found on this site as [Public Acts](#) soon after they become law. For information concerning the relationship between statutes and Public Acts, refer to the [Guide](#).

Because the statute database is maintained primarily for legislative drafting purposes, statutory changes are sometimes included in the statute database before they take effect. If the source note at the end of a Section of the statutes includes a Public Act that has not yet taken effect, the version of the law that is currently in effect may have already been removed from the database and you should refer to that Public Act to see the changes made to the current law.

(50 ILCS 105/3) (from Ch. 102, par. 3)

Sec. 3. Prohibited interest in contracts.

(a) No person holding any office, either by election or appointment under the laws or Constitution of this State, may be in any manner financially interested directly in his own name or indirectly in the name of any other person, association, trust, or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote. No such officer may represent, either as agent or otherwise, any person, association, trust, or corporation, with respect to any application or bid for any contract or work in regard to which such officer may be called upon to vote. Nor may any such officer take or receive, or offer to take or receive, either directly or indirectly, any money or other thing of value as a gift or bribe or means of influencing his vote or action in his official character. Any contract made and procured in violation hereof is void. This Section shall not apply to any person serving on an advisory panel or commission, to any director serving on a hospital district board as provided under subsection (a-5) of Section 13 of the Hospital District Law, or to any person serving as both a contractual employee and as a member of a public hospital board as provided under Article 11 of the Illinois Municipal Code in a municipality with a population between 13,000 and 16,000 that is located in a county with a population between 50,000 and 70,000.

(b) However, any elected or appointed member of the governing body may provide materials, merchandise, property, services, or labor, subject to the following provisions under either paragraph (1) or (2):

(1) If:

A. the contract is with a person, firm, partnership, association, corporation, or cooperative association in which such interested member of the governing body of the municipality has less than a 7 1/2% share in the ownership; and

B. such interested member publicly discloses the nature and extent of his interest prior to or during deliberations concerning the proposed award of the contract; and

C. such interested member abstains from voting on the award of the contract, though he shall be considered present for the purposes of establishing a quorum; and

D. such contract is approved by a majority vote of those members presently holding office; and

E. the contract is awarded after sealed bids to the lowest responsible bidder if the amount of the contract exceeds \$1500, or awarded without bidding if the amount of the contract is less than \$1500; and

F. the award of the contract would not cause the aggregate amount of all such contracts so awarded to the same person, firm, association, partnership, corporation, or cooperative association in the same fiscal year to exceed \$25,000.

(2) If:

A. the award of the contract is approved by a majority vote of the governing body of the municipality provided that any such interested member shall abstain from voting; and

B. the amount of the contract does not exceed \$2,000; and

C. the award of the contract would not cause the aggregate amount of all such contracts so awarded to the same person, firm, association, partnership, corporation, or cooperative association in the same fiscal year to exceed \$4,000; and

D. such interested member publicly discloses the nature and extent of his interest prior to or during deliberations concerning the proposed award of the contract; and

E. such interested member abstains from voting on the award of the contract, though he shall be considered present for the purposes of establishing a quorum.

(b-5) In addition to the above exemptions, any elected or appointed member of the governing body may provide materials, merchandise, property, services, or labor if:

A. the contract is with a person, firm, partnership, association, corporation, or cooperative association in which the interested member of the governing body of the municipality, advisory panel, or commission has less than a 1% share in the ownership; and

B. the award of the contract is approved by a majority vote of the governing body of the municipality provided that any such interested member shall abstain from voting; and

C. such interested member publicly discloses the nature and extent of his interest before or during deliberations concerning the proposed award of the contract; and

D. such interested member abstains from voting on the award of the contract, though he shall be considered present for the purposes of establishing a quorum.

(c) A contract for the procurement of public utility services by a public entity with a public utility company is not barred by this Section by one or more members of the governing body of the public entity being an officer or employee of the public utility company or holding an ownership interest of no more than 7 1/2% in the public utility company,

or holding an ownership interest of any size if the public entity is a municipality with a population of less than 7,500 and the public utility's rates are approved by the Illinois Commerce Commission. An elected or appointed member of the governing body of the public entity having such an interest shall be deemed not to have a prohibited interest under this Section.

(d) Notwithstanding any other provision of this Section or any other law to the contrary, until January 1, 1994, a member of the city council of a municipality with a population under 20,000 may purchase real estate from the municipality, at a price of not less than 100% of the value of the real estate as determined by a written MAI certified appraisal or by a written certified appraisal of a State certified or licensed real estate appraiser, if the purchase is approved by a unanimous vote of the city council members then holding office (except for the member desiring to purchase the real estate, who shall not vote on the question).

(e) For the purposes of this Section only, a municipal officer shall not be deemed interested if the officer is an employee of a company or owns or holds an interest of 1% or less in the municipal officer's individual name in a company, or both, that company is involved in the transaction of business with the municipality, and that company's stock is traded on a nationally recognized securities market, provided the interested member: (i) publicly discloses the fact that he or she is an employee or holds an interest of 1% or less in a company before deliberation of the proposed award of the contract; (ii) refrains from evaluating, recommending, approving, deliberating, or otherwise participating in negotiation, approval, or both, of the contract, work, or business; (iii) abstains from voting on the award of the contract though he or she shall be considered present for purposes of establishing a quorum; and (iv) the contract is approved by a majority vote of those members currently holding office.

A municipal officer shall not be deemed interested if the officer owns or holds an interest of 1% or less, not in the officer's individual name but through a mutual fund or exchange-traded fund, in a company, that company is involved in the transaction of business with the municipality, and that company's stock is traded on a nationally recognized securities market.

(f) Under either of the following circumstances, a municipal officer may hold a position on the board of a not-for-profit corporation that is interested in a contract, work, or business of the municipality:

(1) If the municipal officer is appointed by the governing body of the municipality to represent the interests of the municipality on a not-for-profit corporation's board, then the municipal officer may actively vote on matters involving either that board or the municipality, at any time, so long as the membership on the not-for-profit board is not a paid position, except that the municipal officer may be reimbursed by the non-for-profit board for expenses incurred as the result of membership on the non-for-profit board.

(2) If the municipal officer is not appointed to the governing body of a not-for-profit corporation by the governing body of the municipality, then the municipal

officer may continue to serve; however, the municipal officer shall abstain from voting on any proposition before the municipal governing body directly involving the not-for-profit corporation and, for those matters, shall not be counted as present for the purposes of a quorum of the municipal governing body.

(Source: P.A. 96-277, eff. 1-1-10; 96-1058, eff. 7-14-10; 97-520, eff. 8-23-11.)



U.S. Department
of Transportation
Federal Highway
Administration

Illinois Division

December 20, 2012

3250 Executive Park Dr.
Springfield, IL 62703
(217) 492-4640
www.fhwa.dot.gov/ildiv

In Reply Refer To:
HB-IL

Joseph E. Crowe, P.E.
Illinois Department of Transportation
13473 IL Highway 133
P.O. Box 640
Paris, IL 61944

Subject: Conflict of Interest

Dear Mr. Crowe:

We received your December 17, 2012, letter identifying a county's conflict of interest and requesting clarification regarding the Code of Federal Regulations (CFR). According to Title 23 CFR 1.33, no official authorized "to take part in negotiating, making, accepting or approving any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract". This requirement applies to contracts financed with Federal-aid funds.

Based on the provided information, we concur with the Department's determination that there is the potential for a conflict of interest. To be in compliance with the Federal regulations, the Edgar County Executive must not be involved in contractual activities, as described above, when the firm of interest is considering pursuit of Federal contracts or subcontracts. The executive could not participate in pavement selection decisions where the firm would consider bidding directly or by subcontract. The executive could not approve a contract or concur in award where the construction firm submitted bids or subcontract proposals even when the firm was not selected to perform on the contract. In addition, the individual could not be in the approval process for subsequent actions on such projects.

A waiver or public records disclosure does not exist to address the conflict described above. A solution that meets Federal regulations would be for the executive to recuse himself from such actions for Edgar County and for the county to establish authority for another individual. For the executive to participate in the pavement selection decision, a letter stating the firm would not compete for work on the project would also appropriately document avoidance of a conflict of interest.

If you have any questions, please contact Heidi Liske at heidi.liske@dot.gov or by phone at (217) 492-4637.

Sincerely,

Scott McGuire
Field Engineering Manager

ecc: Mr. Scott Lackey, Bureau of Local Roads and Streets, IDOT District 5