

ASHER & SMITH

ATTORNEYS AT LAW
ESTABLISHED 1934

JACK O. ASHER
(1930-2010)

S. CRAIG SMITH

RALPH S. PEARMAN
OF COUNSEL

1119 NORTH MAIN STREET
P. O. BOX 340
PARIS, ILLINOIS 61944-0340

craig@ashersmithlaw.com

TELEPHONE
217-465-6444

FACSIMILE
217-463-2486

'13 JAN 30 10:11 AM

January 28, 2013

Mr. Joseph E. Crowe, P.E.
Illinois Department of Transportation
Division of Highways/Region 3/District 5
13473 IL Highway 133
P. O. Box 610
Paris, IL 61944

Re: Conflict of Interest/Motor Fuel Tax Funds Agreements

Dear Mr. Crowe:

This is to advise that I have been contacted by Mr. Christopher Patrick to make certain inquiries concerning previous discussions and correspondence dealing with his election to the Edgar County Board. I am in receipt of letter dated December 20, 2012, from Mr. Scott McGuire of the Federal Highway Administration, a letter from you dated January 4, 2013, to the Edgar County Board Members, and a letter from you dated January 25, 2013, to Mr. Aaron Lawson. I am attaching copies of the letters for easy reference.

I am also attaching a revised recusal letter, which was mentioned in Mr. McGuire's December 20, 2012, and in your letter dated January 4, 2013. Pursuant to Federal regulations, Mr. Patrick will not be involved in contractual activities when his concrete company is considering pursuit of Federal contracts or subcontracts, and he will not participate in pavement selection decisions when his company would consider bidding directly or by subcontract. Furthermore, pursuant to Mr. McGuire's letter, Mr. Patrick will not approve a contract or concur in an award where his concrete company submitted bids or subcontract proposals, even when his business was not selected to perform on the contract. However, if Mr. Patrick's business is not considering pursuit of Federal contracts or subcontracts, he would be able to participate and take part in negotiating, making, accepting, or approving any contract or subcontract in connection with a project because he will not be, directly or indirectly, receiving any financial or personal interest in any such contract or subcontract.

As you are aware, Mr. Patrick has been working with your Office, Edgar County Highway Engineers Office, Federal Highway Administration, and Edgar County State's Attorney's office

Mr. Joseph E. Crowe, P.E.
Illinois Department of Transportation
Page 2
January 28, 2013

to find a solution to any conflict of interest which may arise as a result of his partial ownership of Zimmerly Ready Mix.

In review of your letter dated January 4, you mentioned the recommendations which were outlined in Mr. McGuire's letter to you (Federal Highway Administration) dated December 20, 2012. Both letters state that there would be a potential conflict of interest if any company Mr. Patrick has ownership in would directly or indirectly have financial gain from participating in any highway improvement project in which case he would recuse himself, and the County would establish authority for another individual to sign the contracts. (See Mr. McGuire's letter to you.) However, if Mr. Patrick does not have any financial gain in an Edgar County highway improvement project, there would not be a conflict of interest, nor would he not be denied the right to attend the County's Road and Bridge Committee meetings, participate in discussions, participate in votes, and participate in the award or execution of the highway or local road construction or maintenance contract awarded by the Edgar County Board. If my understanding is incorrect, I would appreciate it if you would so advise me by letter.

I am also concerned about the terminology contained in your January 4 and January 25, 2013, letters indicating that he cannot participate in discussions or approvals of any Federal and/or State funded Township highway improvements. Since Mr. Patrick is not on any Township Board as a Trustee or Road Commissioner, I do not understand why you would include the prohibition for him or his companies to be involved in any Township Highway improvement projects. Likewise, I do not think that Mr. Patrick nor his company would be precluded from bidding on the following:

1. Local School District projects,
2. Other Governmental Agencies in which he does not sit on the Board or vote on improvement projects,
3. Municipalities,
4. State of Illinois projects,
5. Illinois Township projects,
6. Private Individual projects in Edgar County,
7. Federal Construction projects.

Again, I would like written confirmation that my interpretation is either correct or incorrect.

In your letter dated January 25, 2013, you indicate that he should not be allowed to attend the County's Road and Bridge Committee meetings. However, I believe that that is an open meeting, and that he should be able to attend that meeting, provided that he does not make any

Mr. Joseph E. Crowe, P.E.
Illinois Department of Transportation
Page 3
January 28, 2013

decisions, participate in any votes, or participate in the award or execution relative to any highway or local road construction or maintenance contract in which he would have a direct or indirect financial gain. Mr. Patrick has provided the Edgar County Board, Illinois Department of Transportation, and Federal Highway Administration with a recusal letter. Therefore, he should be able to participate in all decisions concerning construction or maintenance contracts when he does not have any direct or indirect involvement from a personal gain status. Again, since Mr. Patrick has followed Mr. McGuire's solution to any conflict of interest, I am asking you to advise me whether Mr. Patrick would be able to publicly attend the County's Road and Bridge Committee meetings with the above understanding.

Recently, the District determined that two agreements for use of Motor Fuel Tax were unacceptable due to conflict of interest because Mr. Patrick signed the contracts as Chairman of Edgar County Board. The District's determination is not supported by Mr. McGuire's letter or your January 4, 2013, letter. In both letters, Mr. Patrick would only be precluded from executing contracts if he has a direct or indirect financial or personal gain. He does not. The agreements were for Surveying Services and Bookkeeping Services. We are requesting that you reverse the District's determination.

Finally, according to Mr. McGuire's letter to you dated December 20, 2012, he proposed a solution that meets Federal requirements which would allow Mr. Patrick to recuse himself from such actions for Edgar County, and for the County to establish authority for another individual. He further stated that Mr. Patrick would then be able to participate in pavement selection decision, a letter stating his company would not compete for work on the project would avoid a conflict of interest. Mr. Patrick fully intends to comply and follow Mr. Guire's recommendations. I do not see anything in his letter stating that Edgar County would lose State or Federal funds in the future if Mr. Patrick complies with Mr. Guire's recommendations, which Mr. Patrick has done as stated in the enclosed recusal letter.

Look forward to hearing your response in the near future.

Very truly yours,

ASHER & SMITH



Craig Smith

CS/cc
Enclosures
cc. Mr. Mark Isaf, Edgar County State's Attorney



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

13 JAN 30 10:11 AM

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.

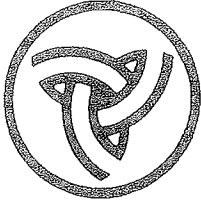
A waiver or public records disclosure does not exist to address the conflict described above. A solution that meets Federal regulations would be for the executive to recuse himself from such actions for Edgar County and for the county to establish authority for another individual. For the executive to 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



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.

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.

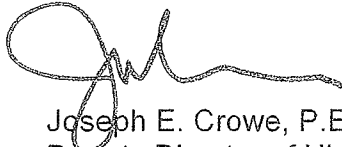
The FHWA and OCC require that Mr. Patrick provide a recusal letter to be placed in the files of IDOT's District 5, the Edgar County Clerk, the Edgar County State's Attorney, and the FHWA. Based on recommendations from IDOT's OCC the District has determined the recusal letter include the following statement:

"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."

Edgar County Board
Page 3
January 4, 2013

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,



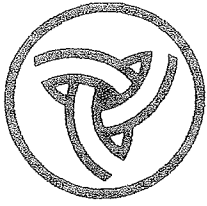
Joseph E. Crowe, P.E.
Deputy Director of Highways,
Region Three Engineer

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



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 25, 2013

Mr. Aaron Lawson, P.E.
Edgar County Highway Engineer
12637 East 950th Road
Paris, Illinois 61944

Dear Mr. Lawson:

RE: Motor Fuel Tax Funds Agreements

We are in receipt of the following agreements for the use of Motor Fuel Tax Funds executed by the County on January 9th, 2013.

1. Preliminary Engineering Services – Knight and Associates Surveying
2. Preliminary Engineering and Construction Guidance – Hillard's Bookkeeping Services

The District has determined that these agreements are unacceptable due to a conflict of interest by the Edgar County Board Chairman. In the Chairman's recusal letter dated January 8, 2013 he indicated that he would recuse himself from any award or execution of contracts that are or will be financed with state or federal funds. His signature providing for the execution of the above mentioned agreements is in violation of his recusal declaration. We are enclosing the agreements and will await your re-submittal with appropriate execution of the agreements.

The District is aware that Mr. Patrick has attended the County's Road and Bridge Committee meeting since he has submitted his recusal letter. As outlined in the letter from this office dated January 4, 2013 to the Edgar County Board it is a conflict of interest for Mr. Patrick to participate in any discussion 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. Mr. Patrick's attendance at these meetings is in violation of his recusal declaration.

Mr. Aaron Lawson
Page 2
January 25, 2013

Should the Chairman continue to execute agreements or other documents and/or attend meetings that include discussions of projects using state and/or federal funds for County or Township improvements it may result in the County losing its ability to use state or federal funds in the future. Should you have any questions please contact Scott A. Lackey, P.E., Acting Local Roads and Street Engineer, at 217-466-7252.

Very truly yours,

Joseph E. Crowe (H46)

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

SAL/als

Enclosures

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

P:\My Documents\Local Roads\EdgarCoMFTAgr.docx

READY-MIX CONCRETE
REINFORCING STEEL
EXPANSION JOINT
SUPPLIES

ZIMMERLY READY-MIX

PLANTS IN
PARIS
MARSHALL
CHRISMAN

MAIN OFFICE AND YARD ♦ 1604 S. MARSHALL STREET ♦ P.O. BOX 395
PARIS, ILLINOIS 61944
PHONE 1-800-782-2599 or 217-465-7621

'13 JAN 30 10:23AM

January 28, 2013

To Whom It May Concern:

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 aeronautics project, highway or local road construction, or maintenance contract that is or will be financed in whole or in part with state or federal funds, in which I would have a direct or indirect financial or other personal interest in the improvement.

Furthermore, I will provide the Edgar County Board with a letter stating that my company will not compete for work on the project, which will allow me to participate in the pavement selection decision.

Sincerely,



Chris Patrick
President
Zimmerly Ready Mix Company

cc. Mr. Scott Lackey, District 5 Acting Local Roads Engineer
Mr. Scott McGuire, FHWA Illinois Division, Springfield, IL
Mr. August Griffin, Edgar County Clerk
Mr. Mark Isaf, Edgar County State's Attorney
Mr. Steven Long, IDOT Division of Aeronautics