



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
8 EAST LONG STREET, SUITE 210
COLUMBUS, OHIO 43215
(614) 466-7090

Advisory Opinion No. 83-004
February 22, 1983

Syllabus by the Commission:

- (1) Division (A)(4) of Section 2921.42 of the Revised Code prohibits a city police officer from contracting to sell trophies and awards to the city department of recreation and parks unless all the requirements of Division (C) of Section 2921.42 are met.
- (2) The criteria for the exemption of Division (C) of Section 2921.42 of the Revised Code are strictly applied; the requirement of paragraph (C)(2) that the goods be "unobtainable elsewhere for the same or lower cost" must be demonstrated by some objective standard, and although competitive bidding helps to demonstrate compliance with the requirement, it is not determinative.
- (3) Where the Ohio Ethics Law and related statutes conflict with the provisions of a city charter, the state criminal statutes prevail.

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You asked whether the Ohio Ethics Law and related statutes prohibit a city police officer from submitting a bid on a contract for the sale of trophies and awards to the city department of recreation and parks.

You stated, by way of history, that a recent amendment to the city charter permits a city employee to enter into a contractual agreement to provide goods or services to the city if the employee's beneficial interest in the contract does not accrue as a result of his city employment. You stated further that the city department of recreation and parks plans to purchase trophies and awards, and that a city police officer wishes to submit a bid. You indicated that the police officer has no involvement with the bidding process or the awarding of the contract.

Division (A)(4) of Section 2921.42 of the Revised Code prohibits a public official from having an interest in a public contract with the same entity of government with which he is connected. A police officer is a "public official" as defined in Division (A) of Section 2921.01 of the Revised Code. A contract for the sale of trophies and awards to the city is a "public contract" as defined in Division (E)(1) of Section 2921.42 of the Revised Code. Therefore, Division (A)(4) of Section 2921.42 of the Revised Code prohibits a police officer from having an interest in a contract for the purchase of trophies and awards by the department of recreation and parks.

Division (C) of Section 2921.42 of the Revised Code provides an exemption from the prohibition of Division (A)(4) if all of the following criteria are met: (1) the subject of the

contract is necessary supplies or services; (2) the services are unobtainable elsewhere for the same or lower cost, or are furnished as part of a continuing course of dealing established prior to the public servant's association with the governmental entity (3) the treatment accorded the governmental entity is either preferential to or the same as that accorded to other customers or clients in similar transactions; and (4) the entire transaction is conducted at arm's length with full knowledge by the governmental entity of the interest of the public servant, and the public servant takes no part in the deliberations or decision with respect to the contract. These criteria are strictly applied, and the burden is on the public official claiming the exemption to demonstrate compliance. It is particularly important that the requirement that the goods or services are "unobtainable elsewhere for the same or lower cost" be demonstrated by some objective standard.

Consequently, a police officer is not prohibited from bidding on a contract to provide trophies and awards to the department of parks and recreation, but he is prohibited from entering into the contract unless all of the requirements of Division (C) of Section 2921.42 of the Revised Code are satisfied. If a particular bid is lowest, it would be some indication that the goods are "unobtainable elsewhere for the same or lower cost," but it is not determinative. Factors such as the availability and adequacy of notice to potential competitors, the openness and fairness of the bidding process, and the conditions of the market must be considered in determining whether the public official complies with Division (C)(2) of Section 2921.42 of the Revised Code.

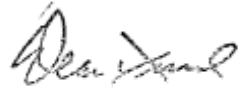
The Ohio Ethics Law and related statutes are general laws establishing a standard of conduct for all citizens who serve as public officials or employees. These provisions are part of the criminal code, which operates uniformly throughout the state. While municipalities may regulate matters of local self-government, ethics in government is not a purely local concern; it is a state-wide concern. Therefore, Chapter 102. and Section 2921.42 of the Revised Code prevail over the city charter provision. See: Fitzgerald v. City of Cleveland, 88 Ohio St. 338 (1913), Leis v. Cleveland Railway Company, 101 Ohio St. 162 (1927) Garcia v. Siffren, 63 Ohio St. 2d 259 (1980), and State ex rel Evans v. Moore 69 Ohio St. 2d 88 (1981).

It should be noted that Division (D) of Section 102.03 of the Revised Code and Division (A)(1) of Section 2921.42 of the Revised Code would prohibit the police officer from improperly using his position, authority, or influence to secure approval of his bid on the contract to provide trophies and awards to the city.

The conclusions of this opinion are based on the facts presented, and are rendered only with regard to questions arising under Chapter 102. and Section 2921.42 of the Revised Code.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised that: (1) Division (A)(4) of Section 2921.42 of the Revised Code prohibits a city police officer from contracting to sell trophies and awards to the city department of recreation and parks unless all the requirements of Division (C) of Section 2921.42 are met; (2) the criteria for the exemption of Division (C) of Section 2921.42 of the Revised Code are strictly applied; the requirement of paragraph (C)(2) that the goods be "unobtainable elsewhere for the same or lower cost" must be demonstrated by some objective standard, and although competitive bidding helps to demonstrate compliance with the requirement, it is not determinative; and (3) where the Ohio

Ethics Law and related statutes conflict with the provisions of a city charter, the state criminal statutes prevail.



Dean S. Luce, Chairman
Ohio Ethics Commission