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January 16, 1986

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THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION AND
IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE.

Re: Conflict of Interest

Dear Ms. Hamill:

You have requested advice on whether your job as the Director of the YWCA Women's Crisis Center and the Rape Crisis Alliance disqualify you from serving on the Idaho Council on Domestic Violence because of a conflict of interest under I.C. § 59-201. You have also asked whether the new proposed council regulations and bylaws dealing with conflicts of interest are appropriate if the answer to the first question is yes.

BRIEF ANSWER

It does not appear that your dual role presents a conflict of interest such that you must disqualify yourself from serving on the Council. However, you should continue to disqualify yourself from considering grants to entities within your health and welfare district. The proposed section 5.c. of the Council's bylaws goes beyond what is required by I.C. § 59-201.

BACKGROUND

As I understand the facts of this situation, you are a member of the Idaho Council on Domestic Violence ("Council"). The responsibilities and duties of the Council are listed in I.C. § 39-5208; these responsibilities include distribution of funds from the domestic violence project account (I.C. § 39-

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5212) to local projects that meet Council standards for aiding victims of domestic violence. The distribution of these funds is determined on the basis of grant applications which are submitted to the council by local domestic violence groups. You have always disqualified yourself from involvement in decisions on grant applications submitted by the Boise YWCA and from other domestic violence organizations within your health and welfare district.

You have also been employed by the Boise YWCA as the Director of the Women's Crisis Center and the Rape Crisis Alliance since 1979. The YWCA has received grants from the Council to help fund their domestic violence program since 1984, but none of this money has been used to supplant or enhance your own salary. The money granted to the Boise YWCA by the Council is used for items such as rents, furniture, housekeeping and janitorial supplies, and emergency medical supplies.

ANALYSIS

I.C. § 59-201 states that "[m]embers of the legislature, state, county, city, district and precinct officers, must not be interested in any contract made by them in their official capacity, or by any body or board of which they are members." This statute is intended to prevent public officers from acting under the influence of their own personal interests rather than the interest of the public. McRoberts v. Hoar, 28 Idaho 163, 174, 152 P. 1046 (1915).

Assuming that you are a public officer involved in awarding contracts, we must consider whether you have an "interest" in the grants awarded to the Boise YWCA. Idaho courts have not interpreted what is meant by "interest," but the kind of "interest" referred to is probably a financial interest, either direct or indirect. See Executive Order No. 85-17 (August 13, 1985). In addition, other states recognize that there is a point where an "interest" is so remote that it could not reasonably influence a public officer's decision. In Stigall v. City of Taft, 58 Cal.2d 565, 25 Cal. Rptr. 441, 375 P.2d 289, 291 (1962), the California Supreme Court stated that conflict of interest statutes "are concerned with any interest, other than perhaps a remote or minimal interest, which would prevent the officials involved from exercising absolute loyalty and undivided allegiance to the best interests of the city." (Emphasis added.) See Fraser-Yamor Agency, Inc. v. County of Del Norte, 68 Cal. App.3d 201, 137 Cal.Rptr. 118 (1977).

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Since the Stigall case, the concept of a "remote interest" has been spelled out in the California Government Code § 1091; under this section, a public officer is not interested in a contract if the interest is remote and the officer discloses the interest. One type of a remote interest is defined as "[t]hat of an officer or employee of a nonprofit corporation." Cal. Gov't Code § 1091(b)(1).

Washington, which has strict conflict of interest statutes, also recognizes that a remote interest may not disqualify a public officer from considering certain matters. For example, Wash. Rev. Code § 42.23 deals with remote interests of municipal officers when making city contracts. One type of remote interest is defined by § 42.23.040(2) as "[t]hat of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary."

The above case and statutes are not Idaho law but they persuasively suggest that a reasonable limit should be placed on defining what an "interest" is in contracts awarded by the Council. This may have been what was intended by Governor Evans in Executive Order No. 85-17 when he directed that "[s]tate employees shall not have a private interest in any contract or grant made by them in their official capacity." (Emphasis added.) In your case, your interest in grants to the Boise YWCA seems too remote to require that you disqualify yourself from serving on the Council. Your salary is fixed and is not paid by grants from the Council. You were employed by the YWCA before Council money was available, and presumably you would continue at your position if Council money were discontinued. Most importantly, your situation does not involve the more typical conflict of interest case where there is some commercial involvement by one of the parties; this case involves a nonprofit organization. In short, I do not see that there is any of the self-dealing that I.C. § 59-201 aims to prevent.

In summary, we have assumed that you are a state officer involved in awarding contracts. It is clear that you have an "interest" in the grants awarded to the Boise YWCA in a broad sense, but that I.C. § 59-201 must be interpreted reasonably so that members are not disqualified from serving on the Council because of a merely "remote" interest. Other states have similarly held that their conflict of interest laws do not apply to an employee of a nonprofit corporation or to an employee on a fixed salary. In your case, you do not appear to have a private interest in the grants, and you work for a nonprofit corporation at a fixed salary. Therefore, it does not appear that you have a conflict of interest.

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It is also significant to note that I. C. § 39-5204 requires Council members to be "representative of persons who have been victims of domestic violence, care providers, law enforcement officials, medical and mental health personnel, counselors, and interested and concerned members of the general public." It seems clear that the legislature intended members of the Council to be knowledgeable about and deeply involved in organizations that deal with the problem of domestic violence. It would be expected that many Council members would be involved in their local domestic violence relief centers. This in fact is the case; five out of seven Council members are involved to some degree with entities that receive grants administered by the Council. Therefore, the term "interest" must not be read so expansively that it frustrates legislative intent and prevents qualified, competent individuals from serving on the Council. To the contrary, it seems that it would be in the best interest of the victims of domestic violence to enlist individuals actively involved in the field.

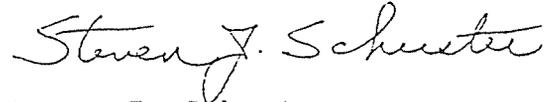
Practically speaking, I.C. § 59-203 states that prohibited contracts which violate the conflict of interest law are voidable and not void. This means the contracts are valid unless and until they are successfully challenged in court. Thus, even if an Idaho court were to find that one of the Council's grants was in violation of I.C. § 59-201, the remedy would be prospective only and would not undo work previously done under other grants.

Finally, it is my opinion that the proposed amendment to section 5.c. of article III of the Council's bylaws goes beyond what is required by I.C. § 59-201. As discussed above, it appears that a remote interest should not act to disqualify an individual from serving on the Council. Disqualification from consideration of grants in a Council member's own health and welfare district would seem adequate to prevent even the appearance of impropriety in the awarding of grants. Perhaps the bylaw could be clarified to disqualify a council member when his or her interest is less remote, such as when grant money is actually used to pay his or her salary.

Please do not hesitate to contact me if you should have any further questions on this matter.

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Very truly yours,



Steven J. Schuster
Deputy Attorney General

SJS/kjb:cjm