



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

BOISE 83720-1000

May 30, 1991

LARRY ECHOHAWK
ATTORNEY GENERAL

TELEPHONE
(208) 334-2400

TELECOPIER
(208) 334-2530

NATURAL RESOURCES
TELECOPIER
(208) 334-2690

Carl B. Kerrick
Killen, Pittenger & Kerrick
200 E. Park St.
P.O. Box A.O.
McCall, ID 83638

**THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE**

Dear Mr. Kerrick:

You have requested an opinion from this office regarding I.C. § 31-1515. This statute prohibits a county commissioner from being personally interested in any contract made with the county. You are currently serving on the Valley County Board of Commissioners and practice law in McCall, Idaho. Your firm occasionally represents indigent criminal defendants. The resulting legal fees and costs are paid for by the county. This opportunity occurs when the two attorneys holding the county public defender contracts have conflicts of interest. The defense counsel appointment is made by the court on a rotating basis among the attorneys in the area who seek this business. According to your letter, the court establishes the hourly rate paid to the defense attorneys and reviews claims made by the attorneys for fees and costs. Ultimately, payment is made by Valley County from its indigency fund.

The question raised in your letter is whether you and/or members of your firm may do business with the county as public defenders. For the reasons set forth below, it is the opinion of

Carl B. Kerrick
May 30, 1991
Page 2

this office that such business dealings by you or any member of your firm would be prohibited by I.C. § 31-1515.

Idaho Code § 31-1515 provides:

No member of the board must be interested, directly or indirectly, in any property purchased for the use of the county, nor in any purchase or sale of property belonging to the county, nor in any contract made by the board or other person on behalf of the county, for the erection of public buildings, the opening or improvement of roads, or the building of bridges, or for other purposes. (Emphasis added.)

Idaho case law dealing with this statute is scant and the cases that cite I.C. § 31-1515 are of little assistance. However, in construing other Idaho Code provisions prohibiting a public officer from contracting with the public body he serves, the Idaho Supreme Court has been strict in its interpretation.

For instance, I.C. § 59-201 provides:

Members 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.

In regard to this provision, the Idaho Supreme Court stated in McRoberts v. Hoar, 28 Idaho 163, 175, 152 P. 1046 (1915):

There is no more pernicious influence than that brought about by public officials entering into contracts between themselves by virtue of which contracts the emoluments of their offices are increased and the time and attention which the law demands that they shall give to the performance of the duties of their offices are given to the performance of the duties required of them under such contracts. Justice, morality and public policy unite in condemning such contracts, and no court will tolerate any suit for their enforcement. The fact that the acceptance of such employment was without fraud and prejudice to the interest of the taxpayers is immaterial. Even in the absence of statutory provisions, such a contract is void; as a

public official cannot make a contract to regulate his official conduct by considerations of private benefit to himself.

* * * *

It is the relation that the law condemns and not the results. It might be that in this particular case, public duty triumphed in the struggle with private interest, but such might not be the case again or with another officer; and the policy of the law is not to increase temptations or multiply opportunities for malfeasance in office.

In Nampa Highway District No. 1 v. Graves, 77 Idaho 381, 386, 293 P.2d 269 (1956), taxpayers challenged the payment to the highway commissioners for services performed pursuant to a contract between the highway district and the commissioners as private individuals. The Idaho Supreme Court stated:

The contract of employment in question interferes with the unbiased discharge of respondents' duties to the public as commissioners and places them in a dual position inconsistent with their duties as trustees for the public and all such contracts are invalid even if there be no specific statute prohibiting them. The law invalidating such a contract is based on public policy and the contention that there was no loss to the Highway District is no defense.

See also, art. 7, § 10, Idaho Constitution; 10A McQuillin, Municipal Corporations § 29.97 (3rd Ed.).

The language used in I.C. § 31-1515 is far more restrictive than I.C. § 59-201. Thus, in light of the strong opinions rendered in McRoberts v. Hoar, supra, and Nampa Highway District No. 1 v. Graves, supra, a literal approach to I.C. § 31-1515 is appropriate.

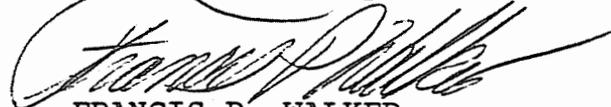
Although the court is largely responsible for administering the defense contracts for indigents, it is the responsibility of the county and county commissioners to provide the financial resources for public defenders. I.C. § 19-859. Further, I.C. § 19-860(b) states:

Carl B. Kerrick
May 30, 1991
Page 4

If a court before whom a person appears upon a formal charge assigns an attorney other than a public defender to represent a needy person, the appropriate district court, upon application, shall prescribe a reasonable rate of compensation for his services and shall determine the direct expenses necessary to representation for which he should be reimbursed. The county shall pay the attorney the amounts so prescribed. The attorney shall be compensated for his services with regard to the complexity of the issues, the time involved, and other relevant considerations. (Emphasis added.)

There can be no doubt that an attorney acting as a public defender is contracting with the county. The judiciary has no financial responsibility for indigent defendants and the court is clearly acting on behalf of the county when appointing a public defender pursuant to I.C. § 19-860(b). Therefore, no other conclusion can be reached but that a county commissioner cannot accept a contract to represent an indigent criminal defendant without violating I.C. § 31-1515. Further, a county commissioner would indirectly benefit from a member of his firm entering into similar contracts and such conduct would also be prohibited by I.C. § 31-1515.

Yours very truly,



FRANCIS P. WALKER
Deputy Attorney General

FPW/pb

L052891C