



ADVISORY OPINION NO. 87-11

SYLLABUS: Under the method by which contracts for unique or professional services are currently awarded by Summit County, as described herein, the office of the County Executive is not considered to have ultimate responsibility for the award of such contracts for purposes of divisions (I) and (J) of Ohio Revised Code section 3517.13.

TO: Jack L. Burgess, Treasurer, John R. Morgan Campaign Committee

You have requested an opinion on the following question:

Under Ohio Revised Code section 3517.13, divisions (I), (J), and (L), does the office of the County Executive in Summit County have the ultimate responsibility for the award of contracts by the county for unique or professional services?

Ohio Revised Code section 3517.13, divisions (I) and (J), provide in part that:

Subject to divisions . . . (L) [and] (M), . . . no agency or department of this state or any political subdivision shall award any contract, other than one let by competitive bidding, . . . for the purchase of goods costing more than five hundred dollars or services costing more than five hundred dollars to [any of several entities enumerated therein whose owners or owners' spouse have individually made] within the two previous calendar years one or more contributions totaling in excess of one thousand dollars to the holder of a public office having ultimate responsibility for the award of the contract or to his campaign committee.

Ohio Revised Code section 3517.13(L) provides in part that:

For purposes of divisions (I) and (J) of this section, if a public officer who is responsible for the award of a contract is appointed by . . . the elected chief executive officer of a county operating under an alternative form of county government or county charter, excluding members of boards, commissions, committees, authorities, councils, boards of trustees, task forces, and other such entities appointed by the chief executive officer, the office of the chief executive officer is considered to have ultimate responsibility for the award of the contract.

Summit County government operates under a charter which establishes the office of the County Executive as the chief executive office of the county. The County Executive has the power "to execute contracts, conveyances and evidences of indebtedness on behalf of the county". Charter of County of Summit, section 2.03. The County Council, as the legislative authority of the county, has the power "to establish procedures governing the making of county contracts". Charter of the County of Summit, section 3.03.

Pursuant to the charter, the County Council, by ordinance and amendment thereto, has established a Board of Control, consisting of the County Executive, the President of County Council, the County Prosecutor, the County Engineer and the Director of Budget and Management, or the designee of each. The County Council has also enacted procedures governing the awarding of contracts for unique or professional services. Such contracts are exempt by ordinance from competitive bidding.

Pursuant to procedures established by ordinance, the County Executive is required to accept and compile qualification statements from all individuals and businesses, who seek personal service contracts with the county. The County Executive or a department director appointed by the County Executive, upon determining the need for unique or professional services, will consult the list of possible candidates and then notify all those listed in the appropriate field that they may submit a proposal. Upon receipt of all interested parties' proposals, the department director or County Executive reviews the proposals and submits all of them, along with a recommendation, to the Board of Control. The board has the discretion to accept or reject the recommendation, to award the contract to another person or firm, or not to award the contract. The ordinance also provides that any such contracts awarded by the Board of Control shall be in writing. (Emphasis added.)

Pursuant to R.C. 3517.13(L), the Summit County Executive is responsible, for purposes of R.C. 3517.13, divisions (I) and (J), for all contracts awarded by his office and the six department heads that he appoints. However, under the procedures established in Summit County, the County Executive and department directors do not actually award any contracts for unique or professional services. Instead, they act in an advisory capacity to the Board of Control, which awards the contract, taking into consideration all relevant factors including, but not limited to, recommendations by the County Executive or department director and fees and costs charged in other proposals. Under these facts, the Board of Control's authority is more than simply approving or disapproving a person or business selected by the County Executive or his appointee. The board is presented with a choice of proposals and has the authority to select any one of them or to reject all of them.

Both divisions (I) and (J) of R.C. 3517.13 are expressly made subject to division (M), which provides in part:

1. Divisions (I) and (J) of this section do not apply to contracts awarded by the board of commissioners of the sinking fund, municipal legislative authorities, boards of education, boards of county commissioners, boards of township trustees, or other boards, commissions, committees, authorities, councils, boards of trustees, task forces, and other such entities created by law. (Emphasis added.)

The Summit County Board of Control is one such entity. Therefore, divisions (I) and (J) of R.C. 3517.13 do not apply to contracts awarded by the board.

For the reasons stated herein, it is the opinion of the Ohio Elections Commission that:

Under the method by which contracts for unique or professional services are currently awarded by Summit County, as described herein, the office of the County Executive is not considered to have ultimate responsibility for the award of such contracts for purposes of divisions (I) and (J) of the Ohio Revised Code section 3517.13.



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Larry H. James, Chairman