

99-095

**ADMINISTRATION OF GOVERNMENT GENERALLY: GENERAL ASSEMBLY
CONFLICT OF INTERESTS.**

CONTRACTS: VIRGINIA PUBLIC PROCUREMENT ACT

Legislator's participation as principal in development team seeking to build student housing on state-supported college campuses would cause him to have prohibited "personal interest" in any contract that is not awarded by educational institution as result of competitive sealed bidding or competitive negotiation.

The Honorable Kenneth R. Melvin
Member, House of Delegates
January 11, 2000

You ask whether a member of the General Assembly is prohibited from participating as a principal in a development team that seeks to build student housing on state-supported college campuses. Your question focuses solely on the General Assembly Conflict of Interests Act and not on other statutes pertaining to obtaining contracts to build student housing.

Section 2.1-639.35(B) of the *Code of Virginia*, a portion of the General Assembly Conflict of Interests Act, §§ 2.1-639.30 through 2.1-639.61 (the "Act"), states:

No legislator^[1] shall have a personal interest in a contract with any governmental agency of the executive or judicial branches of state government, other than in a contract of regular employment, unless such contract is awarded as a result of competitive sealed bidding or competitive negotiation as defined in § 11-37.

A member of the General Assembly would have a "personal interest," which is prohibited by the Act, as a result of a financial benefit or liability accruing to him due to his interest as a principal in the development team.² Assuming that the principal has an interest in the development team exceeding three percent of the total equity, or receives annual income in excess of \$10,000, including dividends and interest income, the General Assembly member would have a "personal interest" in the development team.³

The probative question is whether the member's interest in the development team gives him a "personal interest in a contract" with a governmental agency of the executive branch of state government.

A "personal interest in a contract" is defined in the Act as "a personal interest which a legislator has in a contract with a governmental agency, whether due to his being a party to the contract or due to a personal interest in a business which is a party to the contract."⁴ Thus, the General Assembly member would have an interest in any contract between the development team and a governmental agency.

Any contract entered into by the development team, of which the General Assembly member is a principal, with an agency of the executive branch of state government is permissible if such contract is awarded as a result of competitive sealed bidding or competitive negotiations, as defined in § 11-37 of the Virginia Public Procurement Act. Conversely, if the contract for construction of the student housing at a state-supported college campus has not been awarded by the educational institution as a result of competitive sealed bidding or competitive negotiation, the General Assembly member would have an interest in a contract which is prohibited by § 2.1-639.35(B). I have examined the various exceptions to § 2.1-639.36 of the Act and find none applicable to your situation.

Bearing in mind the legislative admonition in § 2.1-639.30 that the Act is to be "liberally construed to accomplish its purpose," assuming the member of the General Assembly has a "personal interest" in the development team, as that term is defined in § 2.1-639.31, I am of the opinion that the General Assembly member would have a personal interest in any contract between the development team and any state college or university seeking to have student housing built, which is prohibited by § 2.1-639.35(B), unless the contract is awarded as a result of competitive sealed bidding or competitive negotiation.

¹ "Legislator" means a member of the General Assembly of Virginia." Section 2.1-639.31.

² "Personal interest" means a financial benefit or liability accruing to a legislator or to a member of his immediate family. Such interest shall exist by reason of (i) ownership in a business if the ownership interest exceeds three percent of the total equity of the business; (ii) annual income that exceeds, or may reasonably be anticipated to exceed, \$10,000 from ownership in real or personal property or a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business that exceeds, or may reasonably be anticipated to exceed, \$10,000 annually; (iv) ownership of real or personal property if the interest exceeds \$10,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property; or (v) personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business." Section 2.1-639.31.

³ See *id.*

⁴ *Id.*