

VOLUME NO. 38

OPINION NO. 79

CONFLICT OF INTEREST - City officer may not sell supplies to city;
MUNICIPAL GOVERNMENT - City officer may not sell supplies to city;
PUBLIC OFFICERS - City officers may not sell supplies to city;
PUBLIC OFFICERS - City officers prohibited from dealing in city warrants;
WARRANTS - City officers prohibited from dealing in city warrants;
MONTANA CODE ANNOTATED - Sections 2-2-204, 7-5-4109, 7-14-4109;
OPINIONS OF THE ATTORNEY GENERAL - 38 Op. Att'y Gen. No. 55 (1979).

- HELD: 1. A city council person violates the conflict of interest provisions of section 7-5-4109, MCA, by selling supplies to the city.
2. An elected or appointed city official may not purchase a sidewalk, curb, or gutter warrant, provided for in section 7-14-4109, MCA, without violating section 2-2-204, MCA, which prohibits city officers from purchasing or selling city warrants.

2 May 1980

Norbert F. Donahue, Esq.
Kalispell City Attorney
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Dear Mr. Donahue:

You have requested my opinion concerning whether a number of specific practices contemplated by city officers may offend the provisions of the Montana Code Annotated that address conflicts of interest. I have summarized and stated your questions in the following manner:

1. May a business operated by an elected city officer, or owned by a corporation in which the officer is a major stockholder sell supplies to the city?

2. May an elected or appointed officer of a city purchase a "sidewalk-gutter-curb" warrant issued pursuant to section 7-14-4109, MCA, without violating section 2-2-204, MCA?

Section 7-5-4109, MCA, is the controlling statute regarding conflicts of interest in a city such as Kalispell, which has a municipal council-mayor form of local government. That statute provides:

The mayor, any member of the council, any city or town officer, or any relative or employee thereof must not be directly or indirectly interested in the profits of any contract entered into by the council while he is or was in office.

This provision of the Montana Codes has been a part of Montana law since before the turn of the century. The Montana Supreme Court has only addressed the statute in two opinions, neither of which addresses the requirements for a transaction to be termed a "contract" within the context of conflicts of interest.

However, the court has had occasion to address the underlying considerations of a similar question in Schumacher v. City of Bozeman, 174 Mont. 519, 529, 571 P.2d 1135, 1141 (1977). In Schumacher a question arose with respect to the activities of a city commissioner. The court noted that a city official's position "places him on a different level of review regarding his business transactions, than would be that of the ordinary citizen."

A recent opinion from this office addressing a similar conflict of interest statute recognized that courts have generally held monetary or proprietary interests to be the focus of conflict of interest statutes as opposed to merely abstract interests. 38 Op. Att'y Gen. No. 55 (1979). That opinion said such a limitation provides a clear and workable standard for application of the statutes.

Turning to the transactions you described in your request, it is apparent that a pecuniary benefit accrues to the council person who is also the proprietor of, or major interest holder in, a business. Close scrutiny of any of the transactions you describe reveals an implied contract. But, consistent with the reasoning of prior opinions, the crucial factor in applying conflict of interest statutes is the presence of a pecuniary or proprietary interest. Conse-

quently, it is my opinion that a business operated by an elected city official or owned by a corporation in which the officer is a major stockholder may not sell supplies to the city.

Turning to the second question presented, section 2-2-204, MCA, provides:

The state officers, the several county, city, town, and township officers of this state, their deputies and clerks, are prohibited from purchasing or selling or in any manner receiving to their own use or benefit or to the use or benefit of any person or persons whatever any state, county or city warrants, scrip, orders, demands, claims, or other evidences of indebtedness against the state or any county, city, town, or township thereof except evidences of indebtedness issued to or held by them for services rendered as such officer, deputy, clerk, and evidences of the funded indebtedness of such state, county, city, township, town, or corporation.

Your question addresses a particular type of warrant provided for in section 7-14-4109(5), MCA. The special sidewalk, curb, or gutter warrants provided for in that statute are not contained in either of the exceptions listed in section 2-2-204, MCA. They are not held by a city officer for services rendered and they are not evidence of the funded indebtedness of the city. In my opinion the prescription against city officers dealing in warrants found in section 2-2-204, MCA, applies to the special sidewalk, curb, or gutter warrants provided for in section 7-14-4109(5), MCA.

THEREFORE, IT IS MY OPINION:

1. A city council person violates the conflict of interest provisions of section 7-5-4109, MCA, by selling supplies to the city.
2. An elected or appointed city official may not purchase a sidewalk, curb, or gutter warrant, provided for in section 7-14-4109, MCA, without violating section 2-2-204, MCA, which prohibits city officers from purchasing or selling city warrants.

Very truly yours,

MIKE GREELY
Attorney General