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HOUSE BILL 1805

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State of Washington                      56th Legislature                      1999 Regular Session

By Representatives Hatfield, Scott, Pennington and Wolfe

Read first time 02/05/1999. Referred to Committee on Local Government.

1            AN ACT Relating to municipal officers' interest in contracts;  
2 amending RCW 42.23.030, 42.23.040, 42.23.050, and 42.23.060; and  
3 creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            NEW SECTION.    **Sec. 1.** The legislature finds that:

6            (1) The current statutes pertaining to municipal officers'  
7 beneficial interest in contracts are quite confusing and have resulted  
8 in some inadvertent violations of the law.

9            (2) The dollar thresholds for many of the exemptions have not been  
10 changed in over thirty-five years, and the restrictions apply to the  
11 total amount of the contract instead of the portion of the contract  
12 that pertains to the business operated by the municipal officer.

13            (3) The confusion existing over these current statutes discourages  
14 some municipalities from accessing some efficiencies available to them.

15            Therefore, it is the intent of the legislature to clarify the  
16 statutes pertaining to municipal officers and contracts and to enact  
17 reasonable protections against inappropriate conflicts of interest.

1       **Sec. 2.** RCW 42.23.030 and 1997 c 98 s 1 are each amended to read  
2 as follows:

3       No municipal officer shall be beneficially interested, directly or  
4 indirectly, in any contract which may be made by, through or under the  
5 supervision of such officer, in whole or in part, or which may be made  
6 for the benefit of his or her office, or accept, directly or  
7 indirectly, any compensation, gratuity or reward in connection with  
8 such contract from any other person beneficially interested therein.  
9 This section shall not apply in the following cases:

10       (1) The furnishing of electrical, water or other utility services  
11 by a municipality engaged in the business of furnishing such services,  
12 at the same rates and on the same terms as are available to the public  
13 generally;

14       (2) The designation of public depositaries for municipal funds;

15       (3) The publication of legal notices required by law to be  
16 published by any municipality, upon competitive bidding or at rates not  
17 higher than prescribed by law for members of the general public;

18       (4) The designation of a school director as clerk or as both clerk  
19 and purchasing agent of a school district;

20       (5) The employment of any person by a municipality(~~(, other than a~~  
21 ~~county with a population of one hundred twenty-five thousand or more,~~  
22 ~~a city of the first or second class, an irrigation district~~  
23 ~~encompassing in excess of fifty thousand acres, or a first class school~~  
24 ~~district,)) for unskilled day labor at wages not exceeding ((one)) two  
25 hundred dollars in any calendar month. The exception provided in this  
26 subsection does not apply to a county with a population of one hundred  
27 twenty-five thousand or more, a city with a population of more than one  
28 thousand five hundred, an irrigation district encompassing more than  
29 fifty thousand acres, or a first class school district;~~

30       (6)(a) The letting of any other contract (~~(except a sale or lease~~  
31 ~~as seller or lessor) by a municipality, other than a county with a~~  
32 ~~population of one hundred twenty-five thousand or more, a city with a~~  
33 ~~population of ten thousand or more, or an irrigation district~~  
34 ~~encompassing in excess of fifty thousand acres: PROVIDED, That)) in  
35 which the total ((volume of business represented by such contract or  
36 contracts in which a particular officer is interested, singly or in the  
37 aggregate, as measured by the dollar amount of the municipality's  
38 liability thereunder, shall)) amount received under the contract or  
39 contracts by the municipal officer or the municipal officer's business~~

1 does not exceed ((seven)) one thousand two hundred ((fifty)) dollars in  
2 any calendar month((:—PROVIDED FURTHER, That))i

3 (b) However, in the case of a particular officer of a second class  
4 city or town, or a noncharter optional code city, or a member of any  
5 county fair board in a county which has not established a county  
6 purchasing department pursuant to RCW 36.32.240, the total ((volume))  
7 amount of such contract or contracts authorized in this subsection (6)  
8 may exceed ((seven)) one thousand two hundred ((fifty)) dollars in any  
9 calendar month but shall not exceed ((nine)) fourteen thousand four  
10 hundred dollars in any calendar year((:—PROVIDED FURTHER, That there  
11 shall be public disclosure by having an available))i

12 (c) The exceptions provided in this subsection (6) do not apply to  
13 a sale or lease by the municipality as the seller or lessor. The  
14 exceptions provided in this subsection (6) also do not apply to the  
15 letting of any contract by a county with a population of one hundred  
16 twenty-five thousand or more, a city with a population of ten thousand  
17 or more, or an irrigation district encompassing more than fifty  
18 thousand acres;

19 (d) The municipality shall maintain a list of ((such purchases or))  
20 all contracts((, and if the supplier or contractor is an official of  
21 the municipality, he or she shall not vote on the authorization:  
22 PROVIDED FURTHER, That in the case of a first class school district,  
23 there shall be notice of the proposed contract by publication given in  
24 one or more newspapers of general circulation within the district))  
25 that are awarded pursuant to this subsection (6). The list must be  
26 made available for public inspection and copying;

27 (7) The leasing by a port district as lessor of port district  
28 property to a municipal officer or to a contracting party in which a  
29 municipal officer may be beneficially interested, if in addition to all  
30 other legal requirements, a board of three disinterested appraisers((,  
31 who shall be appointed from members of the American institute of real  
32 estate appraisers by the presiding judge of)) and the superior court in  
33 the county where the property is situated((, shall find and the court))  
34 finds that all terms and conditions of such lease are fair to the port  
35 district and are in the public interest. The appraisers must be  
36 appointed from members of the American institute of real estate  
37 appraisers by the presiding judge of the superior court;

38 (8) The letting of any employment contract for the driving of a  
39 school bus in a second class school district((:—PROVIDED, That)) if

1 the terms of such contract (~~((shall be))~~) are commensurate with the pay  
2 plan or collective bargaining agreement operating in the district;

3 (9) ~~The letting of any employment contract to the spouse of an~~  
4 ~~officer of a ((second class school district in which less than two~~  
5 ~~hundred full time equivalent students are enrolled at the start of the~~  
6 ~~school year as defined in RCW 28A.150.040, when such contract is solely~~  
7 ~~for employment as a certificated or classified employee of the school~~  
8 ~~district, or the letting of any contract to the spouse of an officer of~~  
9 ~~a)) school district, when such contract is solely for employment as a~~  
10 ~~substitute teacher for the school district((:—PROVIDED, That)).~~ This  
11 exception applies only if the terms of ((such)) the contract ((shall  
12 be)) are commensurate with the pay plan or collective bargaining  
13 agreement applicable to all district employees and the board of  
14 directors has found, consistent with the written policy under RCW  
15 28A.330.240, that there is a shortage of substitute teachers in the  
16 school district;

17 (10) The letting of any employment contract to the spouse of an  
18 officer of a school district if the spouse was under contract as a  
19 certificated or classified employee with the school district before the  
20 date in which the officer assumes office(~~(:—PROVIDED, That))~~) and the  
21 terms of (~~(such))~~) the contract ((shall be)) are commensurate with the  
22 pay plan or collective bargaining agreement operating in the district.  
23 However, in a second class school district that has less than two  
24 hundred full time equivalent students enrolled at the start of the  
25 school year as defined in RCW 28A.150.040, the spouse is not required  
26 to be under contract as a certificated or classified employee before  
27 the date on which the officer assumes office;

28 (11) The authorization, approval, or ratification of any employment  
29 contract with the spouse of a public hospital district commissioner if:  
30 (a) The spouse was employed by the public hospital district before the  
31 date the commissioner was initially elected; (b) the terms of the  
32 contract are commensurate with the pay plan or collective bargaining  
33 agreement operating in the district for similar employees; (c) the  
34 interest of the commissioner is disclosed to the board of commissioners  
35 and noted in the official minutes or similar records of the public  
36 hospital district prior to the letting or continuation of the contract;  
37 (~~{and}~~) and (d) (~~(and)~~) the commissioner does not vote on the  
38 authorization, approval, or ratification of the contract or any  
39 conditions in the contract.

1 A municipal officer may not vote in the authorization, approval, or  
2 ratification of any contract in which he or she is beneficially  
3 interested even though one of the exemptions allowing the awarding of  
4 such a contract applies. The interest of the municipal officer must be  
5 disclosed to the governing body of the municipality and noted in the  
6 official minutes or similar records of the municipality prior to the  
7 formation of the contract.

8 **Sec. 3.** RCW 42.23.040 and 1961 c 268 s 5 are each amended to read  
9 as follows:

10 A municipal officer (~~shall~~) is not (~~be deemed to be~~) interested  
11 in a contract, within the meaning of RCW 42.23.030, if (~~he~~) the  
12 officer has only a remote interest in the contract and (~~if~~) the  
13 (~~fact and~~) extent of (~~such~~) the interest is disclosed to the  
14 governing body of the municipality of which (~~he~~) the officer is an  
15 officer and noted in the official minutes or similar records of the  
16 municipality prior to the formation of the contract, and thereafter the  
17 governing body authorizes, approves, or ratifies the contract in good  
18 faith by a vote of its membership sufficient for the purpose without  
19 counting the vote or votes of the officer having the remote interest.  
20 As used in this section "remote interest" means:

- 21 (1) That of a nonsalaried officer of a nonprofit corporation;  
22 (2) That of an employee or agent of a contracting party where the  
23 compensation of such employee or agent consists entirely of fixed wages  
24 or salary;  
25 (3) That of a landlord or tenant of a contracting party;  
26 (4) That of a holder of less than one percent of the shares of a  
27 corporation or cooperative which is a contracting party.

28 None of the provisions of this section (~~shall be~~) are applicable  
29 to any officer interested in a contract, (~~though his~~) even if the  
30 officer's interest (~~be~~) is only remote, (~~who~~) if the officer  
31 influences or attempts to influence any other officer of the  
32 municipality of which he or she is an officer to enter into the  
33 contract.

34 **Sec. 4.** RCW 42.23.050 and 1961 c 268 s 6 are each amended to read  
35 as follows:

36 Any contract made in violation of the provisions of this (~~aet~~  
37 ~~shall be~~) chapter is void and the performance thereof, in full or in

1 part, by a contracting party shall not be the basis of any claim  
2 against the municipality. Any officer violating the provisions of this  
3 (~~act shall be~~) chapter is liable to the municipality of which he or  
4 she is an officer for a penalty in the amount of (~~three~~) five hundred  
5 dollars, in addition to such other civil or criminal liability or  
6 penalty as may otherwise be imposed upon (~~him~~) the officer by law.

7 In addition to all other penalties, civil or criminal, the  
8 violation by any officer of the provisions of this (~~act shall work a~~)  
9 chapter may be grounds for forfeiture of his or her office.

10 **Sec. 5.** RCW 42.23.060 and 1961 c 268 s 16 are each amended to read  
11 as follows:

12 If any provision of this (~~act~~) chapter conflicts with any  
13 provision of a city or county charter, or with any provision of a  
14 city-county charter, the (~~city~~) charter shall control if it contains  
15 stricter requirements than this chapter. The provisions of this  
16 chapter shall be considered as minimum standards to be enforced by  
17 municipalities.

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