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FILE NO. S-1281

GOVERNMENTAL ETHICS:
Whether Illinois Purchasing
Act Prohibits a State Employee
From Accepting Employment With
State Contractor

John D. Kramer
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Dear Mr. Kramer:

I have your letter wherein you ask the following questions regarding section 11.1 of the Illinois Purchasing Act. (Ill. Rev. Stat. 1975, ch. 127, par. 132.11-1.)

"a. Under this statute, may a person who is an employee, or the wife, husband, or minor child of an employee of this Department:

- (1) be a non-ministerial salaried or hourly wage employee of a contractor working on a project or providing goods or services for which the contractor has a State contract?

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- (2) be a non-ministerial salaried or hourly wage employee of a contractor working on a project or providing goods or services for which the contractor has a contract with a unit of local government or a local agency which will be paid from Motor Fuel Tax Funds?
- b. Would the response to the above questions differ with regard to a Departmental employee's wife, husband or minor child who occupies a position described in paragraph a(1) or a(2) if the employee of the Department is engaged to provide services of a ministerial character.
 - c. Would the response to the questions posed in paragraph a or b differ depending on the nature of the contract involved. For example, if the employee or the wife, husband or minor child of the employee of the Department has an interest in:
 - (1) a construction contract or a contract for professional engineering in connection with a construction project; or
 - (2) a contract pursuant to which goods, such as office supplies or furniture, are supplied to the Department.

In all of the foregoing situations, it is assumed that the individuals have no other pecuniary interest in the consultant, contractor or other firm than that of an employee."

Section 11.1 of the Illinois Purchasing Act prohibits a State employee, or the spouse or minor child of a

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State employee from acquiring a direct pecuniary interest in any contract which is satisfied by the payment of funds appropriated by the General Assembly. Section 11.1 reads in pertinent part as follows:

"It is unlawful for any person holding an elective office in this State, holding a seat in the General Assembly, or appointed to or employed in any of the offices of State government, or who is an officer or employee of the Illinois Building Authority or the Illinois Toll Highway Authority, or who is the wife, husband or minor child of any such person to have or acquire any contract, or any direct pecuniary interest in any contract therein, whether for stationery, printing, paper or for any services, materials or supplies, which will be wholly or partially satisfied by the payment of funds appropriated by the General Assembly of the State of Illinois or in any contract of the Illinois Building Authority or the Illinois Toll Highway Authority. Payments made for a public aid recipient are not payments pursuant to a contract with the State within the meaning of this Section.

* * *

(Emphasis added.)

In People v. Isaacs (1967), 37 Ill. 2d 205, the Illinois Supreme Court ruled that the phrase "direct pecuniary interest" should be strictly construed in favor of State officers and employees who are accused of violating the Illinois Purchasing Act. Relying on the Isaacs case, I

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advised in opinion No. S-1165, issued October 25, 1976, that the fact that a legislator entered into a subcontract with a general contractor who had contracted with a State agency did not give the legislator a direct pecuniary interest in the contract between the general contractor and the State agency. On page 5 of the opinion I stated:

" * * *

A subcontractor does not contract with the owner of the premises to be improved. (17 C.J.S. Contracts §1 [1963].) Instead, a subcontractor contracts with the owner's general contractor. There is no direct contractual relationship between the subcontractor and the owner. There is thus no direct contractual relationship between a subcontractor and a State agency that has contracted with a general contractor. * * * "

There is a similar absence of a direct contractual relationship between the State and an employee of a State contractor. The employee has a direct interest in his employment contract with his employer. He does not have a direct interest in the contract between his employer and the State or a unit of local government. As a result, assuming as you do that in all of the fact situations described in your questions the only pecuniary interest that the individuals have is that of employee of the State contractor, it is my opinion that none of these fact situations constitute a violation of section 11.1 of

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the Illinois Purchasing Act. The strict construction of the phrase "direct pecuniary interest" called for in People v. Isaacs does not permit expanding the meaning of the phrase to include the interest an employee has in the contract between his employer and the State or a unit of local government.

Because none of the fact situations described in your questions constitute a direct pecuniary interest, it is not necessary in this opinion to determine whether a contract with a unit of local government which is paid with motor fuel tax funds is a contract that is satisfied by the funds appropriated by the General Assembly. However, see in this regard 1957 Ill. Att'y. Gen. Op. 120.

This opinion is limited to section 11.1 of the Illinois Purchasing Act and the general fact situations described in your letter. It is possible that other or more specific facts could constitute situations which violate section 11.1 or other Illinois statutes: in particular, section 33-3 of the Criminal Code (Ill. Rev. Stat. 1975, ch. 38, par. 33-3) relating to official misconduct, or the rules of the Department of Transportation.

In examining the facts of each case, it may be helpful to provide some general observations on the standards

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of conduct to which public officials and governmental employees are held. With regard to public officials I advised in opinion No. S-212 (1970 Ill. Att'y. Gen. Op. 148, 155) that:

" * * * A public officer has a duty to maintain the trust and confidence reposed in his office. He cannot allow his personal financial interest from outside sources to affect the operation of his office and the public faith. Every office holder accepts this responsibility and subjects himself to proper scrutiny at all times. As the authorities point out, it is required of a public officer and it is his duty to refrain from outside activities which interfere with the proper discharge of his official duties and he should not allow himself to be placed in a position which will subject him to conflicting duties or expose him to the temptation of acting in any manner other than for the best interest of the public. The public does not favor or approve of an office holder engaging in personal financial undertakings with those whom he exercises some degree of influence over in his official capacity.

* * *

The relationship between the government as employer and its employees has been interpreted by the courts in the framework of a principal-agent relationship. (See United States v. Drumm (1964), 329 F.2d 109, 112; Fuchs v. Bidwell (1975), 31 Ill. App. 3d 567, 572; rev'd on other grounds, 65 Ill. 2d 503 (1976).) This relationship has been defined

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in 3 C.J.S. Agency (1973), sec. 271 as follows:

"Since the relationship between a principal and an agent is a fiduciary one, demanding conditions of trust and confidence * * * in all transactions concerning or affecting the subject matter of his agency, it is the duty of the agent to act with the utmost good faith and loyalty for the furtherance and advancement of the interests of his principal * * * ."

Very truly yours,

A T T O R N E Y G E N E R A L