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SPRINGFIELD

October 25, 1976

FILE NO. S-1165

**GOVERNMENTAL ETHICS:**  
Legislator Having Subcontract  
for Public Improvement.

Honorable William A. Redmond  
Speaker of the House  
State of Illinois  
Springfield, Illinois 62706

Dear Mr. Redmond:

I have your letter wherein you ask whether a member of the General Assembly violates either "AN ACT to prevent fraudulent and corrupt practices, etc." [The Corrupt Practices Act] (Ill. Rev. Stat. 1975, ch. 102, par. 1 et seq.) or the Illinois Purchasing Act (Ill. Rev. Stat. 1975, ch. 127, par. 132.1 et seq.) when he enters into a subcontract with a general contractor that has contracted with a State agency which pays the general contractor with funds appropriated by

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the General Assembly. State agencies usually do not enter into contracts until after funds for the contracts have been appropriated. My answer is limited to this usual situation.

The Corrupt Practices Act prohibits a public official from being directly or indirectly interested in any contract upon which the official may be called on to act or vote (Ill. Rev. Stat. 1975, ch. 102, par. 3). While the legislature appropriates money to State agencies for contracts, an appropriation does not constitute acting or voting upon a contract when the General Assembly is merely appropriating funds to an agency before the agency has entered into contracts expending the appropriation. Since legislators are not generally called on to act or vote upon particular contracts entered into by State agencies, a legislator who has an interest in such contracts would not violate the Corrupt Practices Act. Of course, the result would be different if the legislature is for some reason required to appropriate money for an existing contract.

Section 11.1 of the Illinois Purchasing Act (Ill. Rev. Stat. 1975, ch. 127, par. 132.11-1) prohibits members of the General Assembly and certain corporations in which a

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member is entitled to distributable income from having or acquiring a direct pecuniary interest in any contract which is satisfied by payment of funds appropriated by the General Assembly. Section 11.1 reads in pertinent part as follows:

"§ 11.1 It is unlawful for any person \* \* \* holding a seat in the General Assembly \* \* \* 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 \* \* \*

It is unlawful for any firm, partnership, association or corporation in which any such person is entitled to receive more than 7 1/2% of the total distributable income to have or acquire any such contract or direct pecuniary interest therein.

It is unlawful for any firm, partnership, association or corporation in which any such person together with his spouse or minor children is entitled to receive more than 15%, in the aggregate, of the total distributable income to have or acquire any such contract or direct pecuniary interest therein.

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In People v. Isaacs, 37 Ill. 2d 205, the Illinois Supreme Court construed section 12 of "AN ACT to revise the law in relation to State contracts" (Ill. Rev. Stat. 1963, ch.

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127, par. 75) which is the predecessor of section 11.1 of the Illinois Purchasing Act. Section 12 also prohibited legislators from having or acquiring a direct pecuniary interest in contracts satisfied by funds appropriated by the General Assembly. The court noted that prior to a 1957 amendment section 12 had prohibited State officers and employees from being "directly or indirectly interested" in State contracts. The 1957 amendment limited the prohibition in section 12 to any "direct pecuniary interest". The court concluded that the 1957 amendment evidenced a legislative intent to substantially narrow the scope of section 12. This legislative intent in addition to the criminal nature of the prohibition convinced the court to strictly construe the phrase "direct pecuniary interest" in favor of State officials and employees accused of violating section 12.

Strictly construed, the prohibition in section 11.1 against legislators having a direct pecuniary interest in contracts which are paid with funds appropriated by the General Assembly does not include the interest a legislator has in a contract between a State agency and a general contractor

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with whom the legislator enters into a subcontract.

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. The subcontractor has no direct claim on the funds the agency has agreed to pay to the general contractor. Section 23 of "AN ACT relating to Mechanic's Liens" (Ill. Rev. Stat. 1975, ch. 82, par. 23) gives a subcontractor a lien on State money appropriated for a public improvement in the amount owed by the general contractor to the subcontractor. However, the subcontractor's lien is contingent on the general contractor's default. (Housing Authority of Franklin County for Use and Benefit of Smith-Alsop Paint and Varnish Co. v. Holtzman, 120 Ill. App. 2d 226.) The subcontractor's interest in the contract between the general contractor and the State agency depends upon the default of the general contractor; the subcontractor does not have a direct interest in the contract.

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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 a subcontractor has in the contract between a general contractor and a State agency. It is, therefore, my opinion that a member of the General Assembly who enters into a subcontract with a general contractor that has contracted with a State agency does not violate the Illinois Purchasing Act.

Section 11.1 of the Illinois Purchasing Act also prohibits certain corporations from having a direct pecuniary interest in contracts which are satisfied by funds appropriated by the General Assembly. As explained above, a subcontractor does not have a direct pecuniary interest in a contract between a general contractor and a State agency. Therefore, a corporation which enters into a subcontract with a contractor that has a contract with a State agency does not violate the Illinois Purchasing Act.

Very truly yours,

A T T O R N E Y   G E N E R A L