

1980-1981 Ky. Op. Atty. Gen. 2-217, Ky. OAG 80-293, 1980 WL 102794 (Ky.A.G.)

*1 Office of the Attorney General
Commonwealth of Kentucky
OAG 80-293

May 30, 1980

Honorable Lloyd E. Spear
Attorney at Law
506 Second Street
Vanceburg, Kentucky 41179

Dear Mr. Spear:

This is in response to your letter of May 5 in which you as City Attorney for the City of Tollesboro present the following question and related facts:

"Is it an impermissible conflict of interest for a Trustee of a sixth-class city to vote to award the City's liability insurance policy to his son, an insurance agent, when the following factors are present:

"1. His son is the only insurance agent in the City;

"2. The contract awarded was on the same terms and at the same rate as earlier contracts awarded before the Trustee was appointed and before the son purchased the insurance agency."

Our response to your question would be in the affirmative. The trustee himself would not be in violation of the conflict of interest statute relating to sixth class cities, namely [KRS 61.280](#), which prohibits him from being interested, directly or indirectly, in any contract with the city of which he is an officer. The basis of this conclusion is found in OAG 80-198 [copy attached] wherein it is pointed out that in general the disqualifying interest of the officer must be pecuniary or proprietary, by which he personally stands to gain or lose something. The fact that the contract involves the trustee's son and not himself, would remove the referred to statutory prohibition as pointed out in [Chadwell v. Commonwealth, 288 Ky. 644, 157 S.W. 2d 280 \(1941\)](#), referred to in said opinion.

On the other hand, the fact that his son is involved in the contract would prohibit the trustee from participating as a member of the board in the awarding of the contract to his son, an insurance agent, for two reasons: First, it is basically against public policy for him to vote on a matter of even an indirect interest as held in the case of [City of Springfield v. Haydon, 216 Ky. 683, 288 S.W. 337 \(1926\)](#); secondly, he would be specifically prohibited from voting or participating in the awarding of such a contract under the Model Procurement Act, particularly [KRS 45A.455](#). This section prohibits any local officer or employee as defined in [KRS 45A.030 \(10\)](#) [[which would include an elected member of the

board of trustees] from participating directly or indirectly in any proceedings or matter pertaining to any contract in which to his knowledge, he or any member of his immediate family has a financial interest therein.

The city's operation under the Model Procurement Act has, however, been made optional under S.B. 163 [enacted at the 1980 Session] as pointed out in OAG 80-279, copy attached.

We might also add that the fact that the son is the only insurance agent in the city and that the contract was awarded at the same rate as earlier contracts had been awarded before the trustee took office, are of no legal consequence in our response to your question.

Yours very truly,
*2 Steven L. Beshear
Attorney General

By: Walter C. Herdman
Assistant Deputy Attorney General

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