



Ohio Elections Commission

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Columbus, Ohio 43266-0418

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September 26, 1995

ADVISORY OPINION 95-3

SYLLABUS: The Ohio Housing Finance Agency is a "board" for purposes of R.C. 3517.13(K) and (M). Therefore the Ohio Finance Agency is exempt from the requirements set forth in O.R.C. Section 3517.13(I).

TO: Thomas C. Washbush
Chief Legal Counsel
Department of Development

You have requested an advisory opinion on the following question:

Is the Ohio Housing Finance Agency a board as set forth in O.R.C. 3517.13(K) or O.R.C. 3517.13(M) (1) so as to make it exempt from the requirements set forth in O.R.C. Section 3517.13(I)?

R.C. 3517.13(I) states as follows:

Subject to divisions (K), (L), (M), and (N) of this section, no agency or department of this state or any political subdivision shall award any contract, other than one let by competitive bidding or a contract incidental to such contract or which is by force account, for the purchase of goods costing more than five hundred dollars or services costing more than five hundred dollars to any individual, partnership, association, including, without limitation, a professional association organized under Chapter 1785 of the Revised Code, estate, or trust if the individual has made or the individual's spouse has made, or any partner, shareholder, administrator, executor, or trustee, or the spouses of any of them has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of one thousand dollars to the holder of the public office having ultimate responsibility for the award of the contract or to the public officer's campaign committee.

R.C. 3517.13(K) states as follows:

For purposes of divisions (I) and (J) of this section, if a public officer who is responsible for the award of a contract is appointed by the governor, whether or not the appointment is subject to the advice and consent of the senate, excluding members of boards, commissions, committees, authorities, councils, boards of trustees, task forces, and other such entities appointed by the governor, the office of the governor is considered to have the ultimate responsibility for the award of the contract.

Therefore, the effect of R.C. 3517.13(K) is to assign the governor the ultimate responsibility for the award of a contract by public officers appointed by the governor. However, if an entity is a board, commission, committee, authority, council, board of trustees, task force, or other such entity then the governor is not assigned the ultimate responsibility for the award of a contract by members of that entity even if the Governor did appoint one or more of those members.

R.C. 3517.13(M) (1) sets forth exceptions to the competitive bidding requirements of R.C. 3517.13(I). See Advisory Opinion No. 87-5. R.C. 3517.13(M) (1) states:

Divisions (I) and (J) of this section do not apply to contracts awarded by the board of commissioners of the sinking fund, municipal legislative authorities, boards of education, boards of county commissioners, boards of township trustees, or other boards, commissions, committees, authorities, councils, boards of trustees, task forces, and other such entities created by law, by the supreme court or courts of appeals, by county courts consisting of more than one judge, courts of common pleas consisting of more than one judge, or by a division of any court if the division consists of more than one judge. Division (M) (1) of this section shall apply to the specified entity only if the members of the entity act collectively in the award of a contract for goods or services.

Therefore, an entity that is a "board" as that term is described under this provision is exempt from the competitive bidding requirements of R.C. 3517.13(I) if the members of that board act

collectively in the award of a contract for goods or services.

The result of this statutory scheme is that if a body is a "board" for purposes of R.C. 3517.13 then it is excepted from the contracting requirements of R.C. 3517.13(I).

The Ohio Housing Finance Agency is a "board" for purposes of R.C. 3517.13. In determining whether the Ohio Housing Finance Agency is a "board" it is necessary to examine the definition of that term as set forth in Advisory Opinion No. 86-1. In Advisory Opinion No. 86-1 this Commission defined "board" as follows:

An official or representative body organized to perform a trust or to execute official or representative functions or having the management of a public office or department exercising administrative or governmental functions.

A committee of persons organized under authority of law in order to exercise certain authorities, have oversight or control of certain matters or discharge certain functions of a magisterial, representative, or fiduciary character.

Group of persons with managerial, supervisory, or investigatory functions and power.¹

In Advisory Opinion No. 86-1 this Commission determined that the Ohio Building Authority is a board or commission of public officers because it is created by statute, it is authorized to perform essential state functions, it is composed of more than one individual, its members are individuals appointed for fixed terms and its members may only be removed for cause. The intent is to ensure that a "board" is composed of more than one person, performs a public function, and possesses sufficient independent authority and autonomy so that it is not simply a mouthpiece for a single elected official. This analysis, when applied to the Ohio Housing Finance Agency, yields the same result.

The Ohio Housing Finance Agency is created by R.C. 175.02. The Ohio Housing Finance Agency is designed to create and implement programs that help low and moderate income individuals obtain housing. See R.C. Chapter 175. This is an essential state function. The Ohio Housing Finance Agency is composed of nine

¹ This definition was obtained by looking to Black's Law Dictionary (5th edition, 1979).

members, with seven of them appointed by the governor for fixed terms and may only be removed for cause. R.C. 175.03. The other two members are the director of development and the director of commerce or their designees. Under R.C. 121.03 these two public officers are appointed by the Governor and may be removed at his pleasure. Despite the fact that two of the nine members of the Ohio Housing Finance Agency are subject to removal without cause, the Ohio Housing Finance Agency has sufficient autonomy that it could not be considered the mouthpiece of a single elected official. An agency action requires an affirmative vote of five members. R.C. 175(A)(3). Therefore, the power to remove certain members at will does not deprive the Agency of its authority. Therefore, the Ohio Housing Finance Agency is a "board or commission" for purposes of R.C. 3517.13.

For the reasons stated herein, it is the opinion of the Ohio Elections Commission that the Ohio Housing Finance Agency is a "board" for purposes of R.C. 3517.13.

APPROVED:



Charles A. Schneider, Chairman