



Ohio Elections Commission

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August 05, 1999

OHIO ELECTIONS COMMISSION

Advisory Opinion 99ELC-07

SYLLABUS: The provisions of Ohio Revised Code §3517.13(I) and (J) are not applicable to an unbid license agreement between the agencies of the State of Ohio and The Franklin County Convention Facilities Authority or through its managing agent concerning the use of the Greater Columbus Convention Center.

TO: Jack S. Levey

You have requested an advisory opinion on the following issue:

Are the provisions of Ohio Revised Code §3517.13(I) and (J) applicable to an unbid license agreement between the agencies of the State of Ohio and The Franklin County Convention Facilities Authority or through its managing agent concerning the use of the Greater Columbus Convention Center?

The Franklin County Convention Facilities Authority (the Authority) is a body corporate and politic created pursuant to Ohio Revised Code §351.02. The Authority was created by the Franklin County Commissioners to operate the Franklin County Convention Center (the Center) and has all of the power and authority available to it pursuant to R.C. §351.02 et seq. Division (D) of R.C. §351.06 gives the Authority the power to "... lease or rent to, ... operate, or contract for the operation by others of, facilities within its territory ..." R.C. §351.06(E) empowers the Authority to

"(m)ake available the use or services of any facility to persons or governmental agencies on such terms and conditions as the authority shall determine.

The Authority entered into a management agreement with Spectator Management Group (SMG) to operate the Center on behalf of the Authority on March 31, 1997. SMG has the authority to lease the facility pursuant to license agreements between SMG, as operator for the Authority, and the intended users of the Center. SMG receives compensation under the management agreement with the Authority. The majority of this compensation is a fixed fee. A portion of the compensation is based on the revenues of the Center. None of the fee comes directly from the license agreements with users of the Center.

In the situation at issue in this advisory opinion request, the Ohio Department of Youth Services (DYS) wishes to use the facilities of the Center by entering into a license agreement with SMG. DYS personnel, however, are concerned that this license agreement with SMG is an unbid contract within the terms of R.C. §3517.13(I) and (J). The provisions of R.C. §3517.13(I) and (J) provide in part that

(s)subject to divisions ... (K), (L), (M) and (N) ... no agency or department of this state or any political subdivision shall award any contract, other than one let by competitive bidding, ... for the purchase of ... services costing more than five hundred dollars to [any of the several individuals or entities enumerated therein whose owners or owners' spouses have individually made] within the two previous calendar years one or more contributions totaling in excess of one thousand dollars to the holder of a public office having ultimate responsibility for the award of the contract or to his campaign committee.

It is the Authority which has the statutory authority to control this facility on behalf of the county. Pursuant to the powers granted to it in the statutes, the Authority has granted SMG the ability to operate the facility. R.C. §351.09 grants to the Authority the ability to

... collect rentals or other charges for the use or services of any facility and contract in the manner provided by this section from persons or governmental agencies desiring the use or services of such facility, and fix the terms, conditions, rentals, or other charges for such use or services. Such rentals or other charges shall not be subject to supervision or regulation by any other

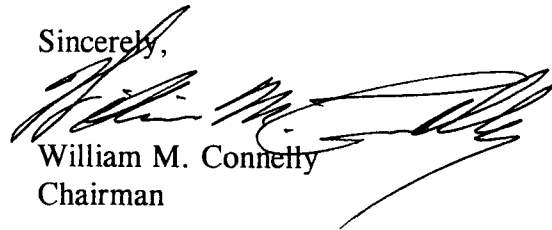
authority, commission, board, bureau, or agency of the state. [Emphasis Added.]

This section of law grants the Authority great latitude in operating and leasing the Center. Rather than operate the Center on its own, the Authority has chosen to contract with SMG to manage the Center. As the operator of the Center for the Authority, SMG is endowed with the same powers and responsibilities as are inherent in the Authority. The license agreement herein is an agreement between the DYS and SMG, but SMG is acting in the place of, and pursuant to the statutory grant of power to, the Authority, a statutory "body politic and corporate." The statutes give the Authority, and thereby its representative, the specific ability to contract with governmental agencies such as the DYS.

Since SMG is merely acting on behalf of the Authority, a license agreement entered into under the auspices of R.C. §351.02 et seq., is not a "contract, other than one let by competitive bidding" as envisioned in the terms of R.C. §3517.13(I) and (J). Therefore, the provisions of R.C. §3517.13(I) and (J) are not applicable to this situation.

Accordingly, it is the opinion of the Ohio Elections Commission, and you are so advised, that the provisions of Ohio Revised Code §3517.13(I) and (J) are not applicable to an unbid license agreement between the agencies of the State of Ohio and The Franklin County Convention Facilities Authority through its managing agent concerning the use of the Greater Columbus Convention Center.

Sincerely,



William M. Connelly
Chairman