



Ohio Elections Commission
State Office Tower, 14th Floor
Columbus, Ohio 43266-0418
(614) 466-2585

December 19, 1986

ADVISORY OPINION NO. 86-5

Syllabus: For purposes of enforcing divisions (I) and (J) of Revised Code section 3517.13 with respect to contracts to be awarded on or after December 19, 1986, by a public officer appointed by the governor, contributions to the governor's campaign committee made prior to September 17, 1986 are not counted in determining contributions that may bar the award of a contract.

TO: Vikram V. Rajadhyaksha, Dodson-Lindblom Assoc., Inc.:

You have requested an opinion on the following question:

For purposes of enforcing divisions (I) and (J) of R.C. 3517.13, are contributions to the governor's campaign committee made prior to September 17, 1986 counted in determining contributions that may bar the award of a contract by a public officer appointed by the governor?

Divisions (I) and (J) of Ohio Revised Code section 3517.13 in summary provide that no agency or department of the state or any political subdivision shall award any contract over \$500 to an individual, partnership, association, including an incorporated professional association, corporation or business trust, if any of certain individuals specified in the divisions or any of their spouses made, individually, within the two previous calendar years, one or more contributions totaling in excess of \$1,000 to the holder of the public office having ultimate responsibility for the award of the contract. R.C. 3517.13(K) provides that for purposes of divisions (I) and (J), if a public officer who is responsible for the award of a contract is appointed by the governor, excluding members of boards, commissions, committees, authorities, councils, boards of trustees, and other such entities, the office of the governor is considered to have ultimate responsibility for the award of the contract.

The contract at issue is one to be awarded by the Ohio Department of Transportation. The director of the department is a public officer appointed by the governor within the scope of R.C. 3517.13(K). Prior to the enactment of division (K) of R.C. 3517.13, the Ohio Attorney General had determined that the governor is not ultimately responsible for the award of a contract by a public officer whom he had appointed. Ohio Atty. Gen. Op. 83-034. In reliance on the Attorney General's opinion, some individuals contributed more than \$1,000 to the governor's campaign committee in the belief that their businesses would still be eligible to receive contracts. Enactment of division (K) of R.C. 3517.13 changed the rules by deeming the governor to be ultimately responsible for the award of contracts by public officers appointed by him, with certain exceptions.

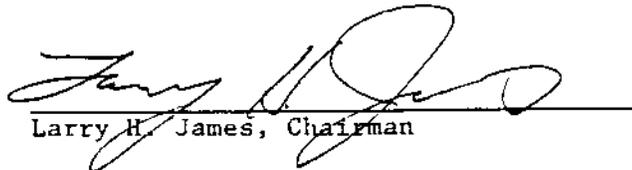
On their face, divisions (I), (J) and (K) apply retroactively to the two calendar years before their amendment and enactment in Am. Sub. H.B. 300. However, Section 3 of Am. Sub. H.B. 300, as amended by Am. Sub. H.B. 1053 effective December 19, 1986, provides as follows:

The amendments of divisions (I), (J), and (K) of section 3517.13 of the Revised Code, as amended by Amended Substitute House Bill No. 300 of the 116th General Assembly, shall be applied only to campaign contributions made on or after September 17, 1986.

The prior wording of Section 3 of Am. Sub. H.B. 300, effective September 17, 1986, was confusing and open to different interpretations, including one that would have retroactively applied divisions (I), (J) and (K) when contributions from an individual exceeded one thousand dollars. The amendment of Section 3 in Am. Sub. H.B. 1053 seeks to clarify the matter by clearly stating that the amendments of divisions (I), (J), and (K) do not apply to contributions made prior to September 17, 1986.

For the most part, Section 3 only has applicability to division (K). This is because the substantive amendments to divisions (I) and (J) made by Am. Sub. H.B. 300 have been repealed by Am. Sub. H.B. 1053. Division (K), on the other hand, is a completely new provision enacted by Am. Sub. H.B. 300 and has been left intact by Am. Sub. H.B. 1053. Therefore, by virtue of Section 3, division (K) of R.C. 3517.13 is not applicable to contributions made prior to September 17, 1986. Consequently, with respect to contributions made to the governor's campaign committee prior to that date, the governor is not deemed to be the officeholder ultimately responsible for the award of a contract by a public officer appointed by him outside of his own office. This does not mean that contributions made prior to September 17, 1986 are not counted in other cases. By its own unambiguous wording, Section 3 applies only to the amendments to divisions (I), (J) and (K) made by Am. Sub. H.B. 300. It does not apply to the unamended provisions, which for purposes of divisions (I) and (J), as already noted, is essentially the language of those divisions as they now exist. Therefore, contributions made by any of the individuals listed in division (I) or (J) of R.C. 3517.13 during the relevant two year period are counted for purposes of enforcing divisions (I) and (J), if in fact the contributions are to the officeholder having ultimate responsibility for the award of the contract.

For the reasons stated herein, it is the opinion of the Ohio Elections Commission that for purposes of enforcing divisions (I) and (J) of Revised Code section 3517.13 with respect to contracts to be awarded on or after December 19, 1986, by a public officer appointed by the governor, contributions to the governor's campaign committee made prior to September 17, 1986 are not counted in determining contributions that may bar the award of a contract.


Larry H. James, Chairman