



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

May 15, 1987

ADVISORY OPINION NO. 87-5

Syllabus: 1. Under the method by which purchase contracts for goods and general services in excess of \$500 are currently awarded by Summit County, as described herein, the office of the County Executive is not considered to have ultimate responsibility for the award of such contracts for purposes of divisions (I) and (J) of Ohio Revised Code section 3517.13.

2. The phrase "two previous calendar years" as used in divisions (I) and (J) of Ohio Revised Code section 3517.13 means the two periods of January 1 through December 31 preceding the year in which the contract is awarded.

TO: Jack L. Burgess, Treasurer, John R. Morgan Campaign Committee:

You have requested an opinion on the following questions:

1. Under Ohio Revised Code section 3517.13, divisions (I), (J), and (L), does the office of the County Executive in Summit County have the ultimate responsibility for the award of contracts by the county in excess of \$500?
2. Under Ohio Revised Code section 3517.13, divisions (I) and (J), when does the "two previous calendar years" period of time begin and end?

Ohio Revised Code section 3517.13, divisions (I) and (J), provide in part that:

Subject to divisions . . . (L) [and] (M) . . . 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 goods costing more than five hundred dollars or services costing more than five hundred dollars to [any of several 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.

Ohio Revised Code section 3517.13(L) provides in part that:

For purposes of division (I) and (J) of this section, if a public officer who is responsible for the award of a contract is appointed by . . . the elected chief executive officer of a county operating under an alternative form of county government or county charter, excluding members of boards, commissions, committees, authorities, councils, boards of trustees, task forces, and other such entities appointed by the chief executive officer, the office of the chief executive officer is considered to have ultimate responsibility for the award of the contract.

Summit County operates under a charter form of government. Said charter establishes the office of the County Executive as the chief executive office of the county. Generally, the County Executive has "all powers and all duties of an administrative or executive nature" including the power "to execute contracts, conveyances and evidences of indebtedness on behalf of the county." Charter of the County of Summit, section 2.03. The County Council is also established by the charter to be the legislative authority of the county and has the power "to establish procedures governing the making of county contracts and the purchasing of county supplies and equipment by competitive bidding." Charter of the County of Summit, section 3.03.

Pursuant to the Charter, the County Council, by ordinance and amendment thereto, has established a Board of Control, consisting of the County Executive, the President of County Council, the County Prosecutor, the County Engineer and the Director of Budget and Management, or the designee of each. The Board is established to administer the awarding of all county contracts for goods and general services costing in excess of \$500. The County Executive appoints and is responsible for supervising six department directors. When the county executive's office or any of the department directors desires to obtain goods or general services costing more than \$500, they are required to obtain three quotes, according to established board practice, from vendors. The three quotes are submitted to the Board of Control along with a recommendation from the department or County Executive's office. The board, after considering the quotes, may then award the contract or not award the contract by a majority vote. The board is not required to award the contract to the recommended vendor or to accept any of the quotes.

R.C. 3517.13(L) provides that the Summit County Executive is responsible, for purposes of R.C. 3517.13, divisions (I) and (J), for all contracts awarded by his office and the six department heads that he appoints. However, under the procedures established in Summit County, the County Executive and department directors do not actually award any contracts for goods or general services in excess of \$500.¹ Such contracts are awarded by the Board of Control. The authority of the Board of Control is more than simply approving or disapproving a single vendor selected by the County Executive or a department director, or approving or disapproving a contract negotiated or executed by the County Executive or a department director, but which is made conditional on receiving approval by the Board. The Board of Control exercises actual discretion among several vendors and quotes. See Advisory Opinion 86-3. The role of the department director in obtaining three quotes and making a recommendation is to provide administrative support to the

1. As previously noted, contracts of \$500 or less are exempt from divisions (I)

board. The actual decision regarding to whom the contract will be awarded rests with the Board of Control.

Both divisions (I) and (J) of R.C. 3517.13 are expressly made subject to division (M), which provides in part that:

1. 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. (Emphasis added.)

The Board of Control is one such entity. Therefore, divisions (I) and (J) of R.C.3517.13 do not apply to contracts awarded by the Board of Control.

You have also asked for a definition of the term "calendar year" as used in Ohio Revised Code section 3517.13, divisions (I) and (J).

Under the rules of statutory construction set forth in the Revised Code, a year is defined as "twelve consecutive months." R.C. 1.44. Calendar year is not defined in the code, but "has been construed in several cases, though not without exception, to indicate the period from January 1 to December 31, inclusive." 5 A.L.R. 584, 590.

"The trend of the reported cases where the word 'preceding' is combined with the term 'calendar year', has been to construe such time phrase to indicate the period from January 1 to December 31 . . . regardless of what the date is to which the word 'preceding' has reference." 5 A.L.R. 584, 586, 591. The Ohio courts and the Ohio Attorney General have used this interpretation in resolving questions that have come before them.

In State ex rel. Gareau v Stillman, 18 Ohio St. 2d 63, 247 N.E. 2d 462 (1969), a potential republican candidate in the May 6, 1969 primary was precluded from placement on the ballot since he had "voted as a member of a different party at any primary election within the next preceding four calendar years." R.C. 3513.191. The potential candidate had voted as a democrat in the May 4, 1965, primary and, therefore, the court ruled that the candidate was ineligible to run for office as a republican since "the words 'calendar year' are commonly accepted as meaning the period of time from January 1 through December 31." Id. at 64.

The Ohio Attorney General in O.A.G. 72-024 cited Gareau when he determined a similar candidate eligibility question. He reiterated that "the term, 'calendar year' as used in the section [R.C. section 3513.191], means the period from January 1 to December 31."

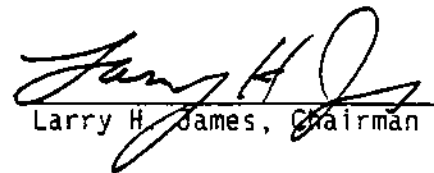
Most recently, in Kay v. Brown, 424 F. Supp. 588 (Ohio 1976), Judge Duncan

cited Gareau and pointed out that "the Supreme Court of Ohio has defined 'calendar year' as the period of time from January 1 through December 31." Id. at 591. The case involved a question of eligibility of a candidate who had switched parties; he had voted in one party primary in May 1972 and wanted to be a candidate for another party in June 1976. Judge Duncan, applying the aforementioned definition of calendar year determined that:

The calendar years preceding the June 1976 primary election are, thus: 1972, 1973, 1974, and 1975. The fact that more than four 365-day periods will have passed between the May 1972 primary election and the June 1976 primary election does not save plaintiff from disqualification by operation of R.C. 3513.191. Id. at 591.

For the reasons stated herein, it is the opinion of the Ohio Elections Commission that:

1. Under the method by which purchase contracts for goods and general services in excess of \$500 are currently awarded by Summit County, as described herein, the office of the County Executive is not considered to have ultimate responsibility for the award of such contracts for purposes of divisions (I) and (J) of Ohio Revised Code section 3517.13.
2. The phrase "two previous calendar years" as used in divisions (I) and (J) of Ohio Revised Code section 3517.13 means the two periods of January 1 through December 31 preceding the year in which the contract is awarded.


Larry H. James, Chairman