

County of Peoria



KEVIN W. LYONS
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PEORIA COUNTY COURTHOUSE
PEORIA, ILLINOIS 61602

GENERAL OFFICES
(309) 672-6900

April 30, 2007

Mr. Randall P. Ray
City Corporation Counsel
Peoria City Hall
419 Fulton Street
Peoria, IL 61602

Re: Peoria City Council Election
Conflict of Interest - Ryan Spain

Dear Mr. Ray:

Ryan Spain's recent election to the Peoria City Council has raised the issue of a potential conflict with his employment by Heartland Partnership, an entity that does business with the City of Peoria. The prohibition of such conflicts is codified at *50 ILCS 105/3*, which prohibits elected officials from being interested in contracts upon which they may be called to vote. A similar provision solely concerning municipal officers is found at *65 ILCS 5/3.1-55-10*. Ryan Spain's election to the City Council does not violate either statute.

The current contract with the City, Heartland Partnership and the County of Peoria provides that the City pays \$50,000.00 to Heartland Partnership for various economic development services. These payments are divided into Marketing, Technical Assistance, Business Recruitment, Memorandum of Understanding (Future Intergovernmental Agreement Assistance) and Business Financial Services. The City pays the \$50,000.00 annually with the next payment expected in 2008. Additionally, the contract will expire in December of 2008 after an expected renewal in January 2008.

Heartland Partnership carries out its responsibilities under the contract through a separate corporate entity, the Economic Development Council. Ryan Spain is employed by Heartland Partnership but is not involved in any of the work covered by the contract with the City. While Heartland Partnership is a not-for-profit corporation of the standard type, the Economic Development Council is a significantly different type of corporation. The EDC is governed by a board whose membership is about 1/3 local government entities, such as the County of Peoria and the City of Peoria. Although the money from the City is paid to Heartland Partnership, the money is used by EDC to perform the required work under the contract.

Clearly, Ryan Spain does not have a direct interest in a contract between the City and Heartland Partnership, so the question is whether the above described situation presents an indirect interest on his part sufficient to violate the statutory prohibition. *Panozzo v. City of Rockford*, 306 Ill.App. 443 (2nd Dist, 1940), established that not all indirect interests are sufficient to violate the statute and stated that not all contracts between a municipality and a corporation employing an officer of the municipality are invalid. The indirect interest in each case must be analyzed on its own facts.

The corporate structure and work performed by EDC under the Heartland Partnership umbrella make this situation closely analogous to that described in Attorney General Opinion 96-011. In that opinion, the employment of a village trustee as a deputy sheriff while the village contracted for deputies to provide police services was not considered sufficient to violate 50 ILCS 105/3, unless the village trustee were shown to receive payment as a deputy sheriff attributable to the contract between the village and the sheriff.

As the Attorney General noted in that situation, the fact that the deputy would not receive increases in wages due to the contract and the nature of the duties to be performed made that situation different from the indirect interest in the *Sperry* case. *People v. Sperry*, 314 Ill. 205 (1924), involved a City Council voting to award a contract to a company that employed 9 out of 11 members of that Council. Obviously, *Sperry* is factually dissimilar to this case as well as the vast majority of conflicts cases.

In addition to the lack of a financial connection between Spain's employment and the contract with the City, the structure of the Heartland Partnership and Economic Development Council makes this case more similar to the case of two governmental entities contracting with each other. The governmental partnership in the Economic Development Council is a factor that is very important in the Attorney General's analysis of this issue since that analysis draws a distinction between governmental and private entities in determining the indirect interest of an employee. I do not think the case law makes this distinction, but if it did, we have governments on both sides of the contract.

More importantly, the structure of the Heartland Partnership organization prevents the finding of a sufficient indirect interest on Mr. Spain's part to trigger the statutes at issue. Mr. Spain does not perform any work on the contract. A separately incorporated entity has performed and will continue to perform work under the contract. Mr. Spain was not involved in the negotiating of the contract at issue. Mr. Spain does not receive any money as a direct result of this contract and would apparently not suffer any adverse employment action if the contract ended.

Since 65 ILCS 5/3.1-55-10 uses the same "indirect interest" language as 50 ILCS 105/3, the same facts that show no indirect interest exists for the one statute apply equally to the other statute. If Mr. Spain had an indirect interest under the statutes at issue, then we would have to examine the various exemptions from the general prohibition. Because he clearly does not have a "certain, definable, pecuniary, or proprietary" interest as required by *Panozzo*, at 456, he is not in danger of violating either statute. Accordingly, I do not address the exemptions in this memorandum.

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As a final note, in some of the public discussions of this issue there seems to be some confusion over when the conflict would arise. The conflict inherent in incompatible public offices generally arises when a person is sworn into the second public office although Judge McDade's opinion in *People ex rel. Smith v. Wilson*, 357 Ill. App.3d 204 (3rd Dist. 2005), apparently finds the conflict occurred during the election. In the type of conflict alleged here, however, the conflict clearly arises when a contract is made or let, 50 ILCS 105/3(a); or when such contract is paid, 65 ILCS 5/3.1-55-10(a). In either case, Mr. Spain's potential conflict would arise sometime after he takes office, if such a conflict existed.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kevin W. Lyons", with a stylized flourish extending from the end.

KEVIN W. LYONS
State's Attorney