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August 27, 2015

ESTABLISHED 1911

D. LOGAN GIFFIN  
(1890-1980)

MONTGOMERY S. WINNING  
(1892-1966)

C. TERRY LINDNER  
(1903-1987)

ALFRED F. NEWKIRK  
(1904-1980)

JAMES M. WINNING  
(1921-2013)

Mr. Michael McCreery  
United Counties Council of Illinois  
217 East Monroe Street, Suite 101  
Springfield, IL 62701

**Re: Conflict of Interest - Abstentions from Voting**

Dear Mike:

**Issue**

May a county board member avoid a prohibited interest by abstaining from voting but not recusing him/herself from participation and discussion on proposed contracts or bids including a contract in which the board member has a financial interest?

**Analysis**

A county board member having a financial interest in a company or entity submitting a bid proposal to the county board participated in a discussion on the proposed bids and contracts, but abstained from voting; however, the county board did not accept the contract or bid proposal of the entity in which the board member had a financial interest.

The Public Officer Prohibited Activities Act (50 ILCS 105/3) provides as follows:

No person holding any office, either by election or appointment under the laws or Constitution of this State, may be in any manner financially interested directly in his own name or indirectly in the name of any other person, association, trust, or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote. No such officer may represent, either as agent or otherwise, any person, association, trust, or corporation, with respect to any application or bid for any contract or work in regard to which such officer may be called upon to vote. (Emphasis added)

The Public Officer Prohibited Activities Act in substance prohibits participation by any elected or appointed officer having a direct or indirect financial interest (county board member) in any contract or work in which such officer (*i.e.*, county board member) may be called upon to act or vote. If a recusal is required as a result of a prohibited conflict of interest, the recusal not only extends to voting, but to the entire issue. The courts have consistently held as a basic concept that in the event a member of a governmental body has a personal interest in an issue coming before that body, the public member is disqualified from “acting or voting” on the issue.

The Attorney General opined that: “. . . [t]he member with the conflict of interest should disqualify himself before the board proceeds in any way to consider . . .” (Ill. Atty. Gen. Op. No. I-98-019). The Attorney General in commenting on the “abstention requirements of the statute” (Public Officer Prohibited Activities Act) opined that it applied to “any actions” of the county board which includes prohibiting any participation or discussions on the matter in which a public member has a conflict of interest. (Ill. Atty. Gen. Op. No. I-00-008). Also See Ill. Atty. Gen. Op. Nos. I-01-007 and I-99-020.

### Conclusion

The initial question, apart from abstaining from voting, is whether the county board member having a direct or indirect financial interest must recuse himself/herself from participation in a discussion to avoid a prohibited conflict of interest. A county board member having a prohibited interest in the matter coming before the county board must recuse him or herself from participation and make full disclosure before the board proceeds in any manner on the proposed contract or bid.

Since the county board did not award the contract to the entity in which the county board member had a financial interest in such contract, the inadvertent participation in the discussion by the county board member, in our opinion, does not invalidate the contract awarded to the entity.

Sincerely,

GIFFIN, WINNING, COHEN & BODEWES, P.C.



Herman G. Bodewes

HGB:pa

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**Disclaimer:** This opinion was prepared by Giffin, Winning, Cohen & Bodewes, P.C. at the request of UCCI and is to be used solely by UCCI and its members. The State’s Attorney is the attorney for the County. Legal advice, if requested, should be sought from the State’s Attorney.