

## MEMORANDUM

TO: Contracting File  
FROM: Paul E. O'Reilly, Assistant Prosecutor, Ashland County  
RE: Pay-to-Play Prohibitions, 2006 Am. Sub. H.B. 694 (eff. 4-4-07)  
DATE: May 11, 2007

### **PAY-TO-PLAY PROHIBITIONS**

In addition to the routine steps described in our guideline document encaptioned "Standard Formalities for Entering a County Contract", most county, township, and school district contracts are now generally subject to the new "pay to play prohibitions" contained in 2006 Am. Sub. H.B. 694, which became effective on April 4, 2007. The new legislation is, in my opinion, not well drafted and it has many ambiguities in it that are potentially subject to differing interpretations, the resolution of which are yet to be determined by competent authority.

Generally, under the new law: there is one set of rules, and a related certificate requirement, that applies to county contracts with individuals, partnerships, unincorporated businesses, associations, estates, and trusts; and there is another set of similar rules, and a related certificate requirement, that applies to county contracts with corporations and business trusts. This Memo will briefly review both sets of rules, and the related certificate requirements, below, and our explanation of the new "pay to play prohibitions" and the certification requirements discussed herein will apply to the all covered proposed county contracts entered on and after April 4, 2007.

#### ***Individuals, partnerships, unincorporated businesses, associations, estates, and trusts.***

R.C. 3517.13(I)(1)(a) provides, generally, that no political subdivision shall award any bid or unbid contract, including purchase orders, for the purchase of goods or services costing more than five hundred dollars to any individual, partnership or other unincorporated business, association, professional association organized under Chapter 1785. of the Revised Code, estate, or trust if any of the individuals designated in the statute has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of *one thousand dollars* (but it also appears that there are situations where combinations of contributions are aggregated and to which a higher contribution limit applies) to the holder of the public office having ultimate responsibility for the award of the contract or to the public officer's campaign committee. With respect to county contracts and purchase orders wherein the board of county commissioners is the contracting authority, each commissioner is, in my opinion, "the holder of the public office having ultimate responsibility for the award of the contract." R.C. 3517.13(I)(3) then goes on to also provide that no political subdivision shall enter into any such covered contract (i.e., any bid or unbid contract, including purchase orders, for the purchase of goods or services costing more than five hundred dollars) unless the contract includes a certification by the individual, partnership or other unincorporated business, association, estate, or trust. The certification must state that certain persons designated in the statute are in compliance with the provisions of R.C. 3517.13(I)(1).

For convenience in the administration of county contracts and contracting procedures, I am attaching hereto a certificate that I think complies with the requirements of R.C. 3517.13(I)(1) and (I)(3). This certificate should be provided to any individual, partnership or

other unincorporated business, association, estate, or trust seeking to enter into a covered contract with the county, and the board of county commissions should not approve such covered contract unless it includes a fully completed and signed certification by such individual, partnership or other unincorporated business, association, estate, or trust.

### ***Corporations and business trusts***

The new law includes similar requirements that apply to covered contracts (i.e., any bid or unbid contract, including purchase orders, for the purchase of goods or services costing more than five hundred dollars) between the county and a corporation or business trust (except a professional association organized under Chapter 1785. of the Revised Code). R.C. 3517.13(J)(1)(a) provides, generally, that no political subdivision shall award any bid or unbid contract, including purchase orders, for the purchase of goods or services costing more than five hundred dollars to any corporation or business trust, except a professional association organized under Chapter 1785. of the Revised Code, if any of the individuals designated in the statute has made, as an individual, within the two previous calendar years, taking into consideration only owners for all of that period, one or more contributions totaling in excess of *one thousand dollars* (but it also appears that there are situations where combinations of contributions are aggregated and to which a higher contribution limit applies) to the holder of the public office having ultimate responsibility for the award of the contract or to the public officer's campaign committee. With respect to county contracts and purchase orders wherein the board of county commissioners is the contracting authority, each commissioner is, in my opinion, "the holder of the public office having ultimate responsibility for the award of the contract." R.C. 3517.13(J)(3) then goes on to also provide that no political subdivision shall enter into any such covered contract (i.e., any bid or unbid contract, including purchase orders, for the purchase of goods or services costing more than five hundred dollars) unless the contract includes a certification by the corporation or business trust. The certification must state that certain persons designated in the statute are in compliance with the provisions of R.C. 3517.13(J)(1).

For convenience in the administration of county contracts and contracting procedures, I am attaching hereto a certificate that I think complies with the requirements of R.C. 3517.13(J)(1) and (J)(3). This certificate should be provided to any corporation or business trust seeking to enter into a covered contract with the county, and the board of county commissions should not approve such covered contract unless it includes a fully completed and signed certification by such corporation or business trust.

This Memorandum expresses my *initial impression* the new "pay to play prohibitions" contained in 2006 Am. Sub. H.B. 694. In considering the content of this Memorandum, it should be kept in mind that because of the draftsmanship used in crafting H.B. 694 and the attendant ambiguities in the Bill, its application to certain types of scenarios that may arise is potentially uncertain and likely must await either further legislative amendments to clarify the new law and/or the development of a body of interpretive law based upon court decisions and formal opinions by the Ohio Attorney General and/or county prosecutors.

See attached certificate forms.

**END OF DOCUMENT**