

OPINION
56-89

May 29, 1956 (OPINION)

OFFICERS

RE: Aldermen - Interest in Contract of City

In your letter of May 26, 1956, you request an opinion as to whether an alderman of your city may accept employment with a contractor doing business with the City as low bidder on a project. You state additionally that the alderman's son is actually doing the work while using his father's machinery, so it is not completely clear if the alderman himself is an employee of the firm doing business with the City of Linton. At any rate, under either factual situation, you wish to know if there exists a violation of the "direct or indirect" clause of section 40-0809 of the Code. We do not believe under these facts the alderman would be "engaged either directly or indirectly . . . in any business transaction . . . with the city" within the meaning of the statute cited.

Some question might arise, however, as to whether section 40-1305 concerning direct or indirect interest of municipal officers in contracts or work of the municipality, has been violated. In a recent opinion, dated May 11, 1956, we dealt with the problem of municipal officers who are also employees (not stockholders) of firms doing business with the municipality. We stated as follows: "Our view is that the prohibition mentioned extends only to those employees of firms doing business with a municipal corporation and who are municipal officers, when it can be shown that the employee could derive pecuniary benefit from his dual position. It is doubtful, for instance, that a janitor-alderman could take advantage of his position to reap that financial gain the statutes were designed to prevent. On the other hand a salesman-alderman, whose living as a private citizen depended on commissions, would very likely have an opportunity to vote on a measure which could bring him personal gain. Thus each case will have to be decided on its own peculiar facts." The essence of the opinion of course, is that a municipal officer must not engage in any sort of private employment in which his official position could be used to his own advantage; we might go even further and restrict such employment when it could be shown that the employer could somehow gain from his employee's official position, by soliciting favorable votes on further transactions of said employer with the city, for instance. In your case, however, it appears that the transaction has been completed, that the City and its officers are in no position to grant special favors to the contractor, and that the employment of an alderman was mere coincidence. Assuming this to be true, we find nothing in the law to prevent the alderman's employment in the manner suggested.

There is no hard and fast rule to be applied in situations such as this, Mr. Gefreh. It is obvious that fraud and corruption in office are things the statutes contemplate. And, as we have stated "each case will have to be decided on its own peculiar facts." Frankly, we are inclined to interpret the statutes liberally; a strict or overly

technical construction might well result in desertion of the ranks of office holders in smaller communities throughout the State.

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Attorney General