

STATE OF TENNESSEE

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July 19, 2005

Opinion No. 05-113

Applicability of Tenn. Code Ann. § 4-51-113(g)

QUESTION

An employee of the Tennessee Education Lottery Corporation has recently married an employee of one of the corporation's major procurement vendors. Neither employee has management or decision-making authority for the employer. Do the prohibitions of Tenn. Code Ann. § 4-5-113(g) require one of the employers to terminate its employee?

OPINION

It is our opinion that the Tennessee General Assembly did not intend for the prohibitions contained in Tenn. Code Ann. § 4-51-113(g) to require either the TEL or its major procurement vendor to terminate its employee under these circumstances.

ANALYSIS

An employee of the Tennessee Education Lottery Corporation ("TEL") has recently married an employee of one of TEL's major procurement vendors. The TEL employee is a player hotline representative. According to the information provided, the purpose of her job is to provide courteous and responsive answers to questions posed by players concerning TEL products and games. Her duties include answering questions, communicating with TEL personnel, researching the results of TEL games, and operating telecommunications equipment. The employee of the TEL vendor is employed as a warehouse clerk in the vendor's warehouse facility. Again, according to the information provided, his duties include packing instant lottery tickets for delivery to retailers in the State. He is responsible for scanning bar codes from ticket packs into a file shipping system, inserting bills of lading, and affixing shipping labels on the completed package. You have indicated that neither of these employees has management or decision-making authority for the TEL or the vendor.

You have asked whether the prohibitions contained in Tenn. Code Ann. § 4-51-113(g) of the Tennessee Education Lottery Implementation Law ("the Lottery Act") require TEL or its vendor to terminate its employee under these circumstances. That statute provides as follows:

No lottery system vendor nor any applicant for a major procurement contract, or an officer, director or employee of such vendor or

applicant, or a member of such officer's, director's, or employee's immediate family residing in the same household, shall pay, give, or make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service, excluding food and beverages having an aggregate value not exceeding one hundred dollars (\$100) in any calendar year, to any director, the chief executive officer or any employee of the corporation, or to a member of the immediate family of any such person.

This provision was not part of the original Lottery Act adopted by the General Assembly in 2003. Rather, the General Assembly adopted it as an amendment to HB 2156/SB 2092 in 2004. In adopting this legislation, the General Assembly did not include any definitions or guidance on what constitutes an "economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service." However, the legislative history indicates that the Senate sponsor intended for this provision to provide the same ethics legislation with respect to TEL vendors as the General Assembly has for lobbyists. During discussions on the Senate floor, Senator Cohen made the following statements explaining the purpose of this provision:

What it basically does is give the same rules to the lottery for food, drink and entertainment, gifts that the general assembly lobbies under, which is no vendor or the employee of a vendor, or the relative of a vendor or any other way that a vendor could try to influence improperly the activities of the lottery corporation. . . .

Amendment six (6) is the penultimate amendment. That is the one that analogizes the lottery prohibitions with the legislative prohibitions that say not only can a vendor not buy you something, but the employee of a vendor, the relative of a vendor or a close associate of the vendor cannot try to influence you.

(Senate Session Floor Debates, May 20, 2004, Tape # S-87). Similarly, during discussion at which the legislation was adopted by the Senate, Senator Bryson noted that it included "contractor ethics legislation similar to what the General Assembly has." (Senate Session Floor Debates, May 21, 2004, Tape # S-95).

In light of these statements, we think it appropriate to look to the applicable provisions in the Tennessee Lobbyist Registration and Disclosure Act, Tenn. Code Ann. §§ 3-6-101, *et seq.* (the "Lobbying Act"), for guidance in interpreting and applying Tenn. Code Ann. § 4-51-113(g) to the circumstances outlined above. The provision of the Lobbying Act most analogous to the prohibitions contained in Tenn. Code Ann. § 4-51-113(g) of the Lottery Act is found in § 3-6-114(a)(1). That statute provides as follows:

No lobbyist or employer of a lobbyist may provide a gift, directly or indirectly, to a candidate for public office, official in the legislative

branch, official in the executive branch, or immediate family of such candidate or official.

The term “gift” is defined in the Lobbying Act as:

a payment, honorarium, subscription, loan, advance, forbearance, rendering or deposit of money or services, unless consideration of equal or greater value is received. “Gift” does not include a political contribution otherwise reported as required by law, a commercially reasonable loan made in the ordinary course of business, or *a gift received from a member of the person’s immediate family* or from a relative within the third degree of consanguinity of the person or of the person’s spouse, or from the spouse of any such relative. “Gift” does not include the waiver of a registration fee for a conference or education seminar.

Tenn. Code Ann. § 3-6-102(9) (emphasis added).

Under this definition, gifts from a candidate’s or official’s immediate family would not be prohibited under the Lobbying Act. In light of the Senate sponsor’s statements that the TEL vendor prohibitions operate similarly to the General Assembly’s lobbyist prohibitions, we think that the General Assembly intended that a similar definition of “gift” apply to § 4-51-113(g) of the Lottery Act. Accordingly, it is our opinion that Tenn. Code Ann. § 4-51-113(g) would not apply in the situation where an employee of the TEL is married to an employee of one of the TEL’s major procurement vendors, particularly, where neither employee has any management or decision-making authority for TEL or the vendor.

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