



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTON
ATTORNEY GENERAL

March 16, 1988

Mr. Robert J. Provan
Office of General Counsel
Stephen F. Austin State University
P. O. Box 6214, SFA Station
Nacogdoches, Texas 75962-6214

LO-88-30

Dear Mr. Provan:

Your letter of February 29, 1988 to Rick Gilpin has been referred to me. You state that subcontractors on construction projects at Stephen F. Austin State University plan to purchase supplies from a firm in which a Regent owns a substantial interest. You ask whether the proposed purchase of supplies would constitute an unlawful conflict of interest.

Attorney General Opinion JM-171 (1984) dealt with a related question. It involved a city councilman who had a pecuniary interest in an air conditioning business which served as a subcontractor on a city construction project. The opinion determined that a conflict of interest would arise if the general contractor had already agreed to contract with the subcontractor at the time the city chose the general contractor for the construction contract. If the agreement between the general contractor and the subcontractor arose only after the city let the contract, then there was no conflict of interest.

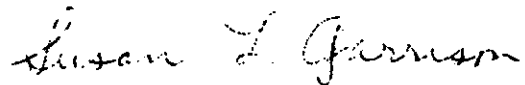
You inquire about a situation where the regent is not the subcontractor, but the subcontractor's supplier. Thus, the regent's interest is more removed from the contract with the university that was the councilman's interest from the contract with the city. Nonetheless Attorney General Opinion JM-171 should provide at least a partial answer to your question. A conflict of interest does not arise if, at the time the university entered into the contract with the general contractor, either (1) the general contractor had not yet contracted with the subcontractor or (2) the general contractor had contracted with the subcontractor, but the subcontractor had not contracted or otherwise committed to purchase supplies from the regent's firm.

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Attorney General Opinion JM-171 (1984) does not provide any guidance in a case where the subcontractor's agreement with the general contractor preexisted the letting of the contract and the subcontractor had already contracted with the regent's firm for supplies or had demonstrated by his established business practice or other means that he would purchase supplies from the regent's firm. This senario raises a new question of conflict of interest, which probably should be addressed by formal opinion rather than by letter.

Enclosed is a copy of Attorney General Opinion JM-171 (1984). If you had additional questions which it does not answer, please let us know.

Yours very truly,



Susan L. Garrison
Assistant Attorney General
Opinion Committee

SLG/er
Enclosure