

Advisory Opinion AO-18-01

October 31, 2018

Question: Can immediate family members of tribal officials enter into contracts with the tribe?

Review of Ethics Code:

Sec. 117-45.3. Code of Ethics.

- (a) No Tribal official of the Eastern Band of Cherokee Indians shall participate in the selection or in the award or administration of a contract or grant award of funds from any government agency, if a conflict of interest, real or apparent, shall be involved.
- (b) No Tribal official or any member of their immediate family shall solicit or accept gratuities, favors or anything of monetary value from contractors, potential contractors or subcontractors who are contracting to perform services or sell goods or property to the Tribe or a Tribal program.
- (c) No Tribal official shall enter into any contract for services or goods with any Tribal entity, enterprise, or program for the purpose of either receiving or providing services or goods. . . .

Sec. 117-45.1(a).

- (4) Conflict of interest. A conflict of interest shall be deemed to arise when the elected or appointed official, or executive staff employee or any member of their immediate family, or an organization or firm which employs such official, executive staff employee or family member has a financial or other interest in the firm or person selected for the contract or grant award.

Factual background:

Tribal Officials are specifically prohibited from entering into contracts for goods or services with any Tribal entity or program. To what extent does that prohibition extend to their family members?



Analysis and Conclusions:

A Tribal Official cannot participate “in the selection or in the award or administration” of a contract involving their immediate family members. There are three areas of prohibition: 1) selection, 2) award, 3) administration. So long as the tribal official is not involved in any of these three areas for the particular contract, then the immediate family member of a tribal official could contract with the tribe.

So, for example, if the tribal official was employed in the human resources department, there would be no prohibition of that official’s immediate family member entering into a contract to provide janitorial services for the HR offices. This presumes that the tribal official in the human resources department had no responsibility for the 1) selection, 2) award, or 3) administration of that housekeeping contract.

In another example, if the tribal official was in the Executive Office and had overall responsibility for the administration of ALL contracts with the Tribe, then none of that tribal official’s immediate family members would be able to enter into a contract with the Tribe.

If an immediate family member is prohibited from contracting with the Tribe because a tribal official had responsibility for selection, award, or administration of a particular contract, then that prohibition extends to an entity that employs the immediate family member and the prohibition extends to an entity owned by the immediate family member.

If an entity employing or owned by an immediate family member is allowed to contract with the Tribe, then such employment or ownership by the immediate family member is not a prohibited “gratuity, favors, or anything of monetary value” described in subsection (b) of Section 117-45.3, cited above.

Note: This advisory opinion was based on specific circumstances, the Standards of Ethical Conduct (Cherokee Code Sec. 117-45), and other relevant code provisions and policies in effect on the date the legal analysis was prepared and subsequently released.