



## CASE REPORT

### **MUNICIPAL ETHICS — LOCAL OFFICIALS — PROHIBITED CONTRACT INTERESTS. Local officials do not violate the statutory prohibition against beneficial contract interests unless they hold authority to directly influence the contract's formation. *Petersen v. Citizens for Des Moines, Inc.*, No. 52344-9-I, (Slip Op., February 14, 2005).**

**I. Facts.** A local citizens organization challenged the election of Gary Petersen to the Des Moines City Council, alleging that Petersen's service on the City Council would violate the state municipal ethics statute. Petersen was a part owner and salaried employee of the parent company that owned Pete's Towing, which various departments of the City of Des Moines had historically contacted for purposes of removing vehicles from city property. The citizens group contended that Petersen was disqualified from holding office under RCW 42.23.030, which prohibits municipal officers from being "beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer[.]" The King County Superior Court granted the citizens group's motion for summary judgment, and Petersen appealed.

**II. Applicable Law and Analysis.** On appeal, Division One of the Washington Court of Appeals reversed the superior court's ruling and concluded that Petersen's part ownership of Pete's Towing did not disqualify him from service on the Des Moines City Council. The appellate court's multifaceted opinion reasoned that Petersen had not engaged in the type of self-dealing prohibited by Chapter 42.23 RCW, and the city's historic towing requests were not truly "contracts" within the meaning of that statute.

More significant, however, was the court's rejection of the argument that Petersen had — or could have — "supervised" any contractual relationship with Pete's Towing in his role as a Des Moines Councilmember. Under the Council-Manager form of local government authorized by Chapter 35A.13 RCW, the city manager is vested with exclusive authority over a city's administrative affairs; city councilmembers are prohibited from supervising or otherwise directly influencing the contracting decisions of the city manager's subordinates. Because Petersen could not directly influence the city personnel authorized to contact Pete's Towing on the city's behalf, Petersen lacked the type of supervisory contract role prohibited under RCW 42.23.030.

**III. Conclusion.** The *Petersen* case clarifies that municipal officers do not violate the prohibition on beneficial contract interests where — as a matter of law — they lack effective control over a contract's formation. As the *Petersen* court noted, however, this determination

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requires a case-by-case analysis. In this regard, cities should carefully consider their adopted form of government to determine which local officials hold decisional authority over the selection of outside contractors. A thorough review of the city's contracting and purchasing policies, together with any locally-enacted ethics codes, is likewise warranted. Any questions regarding the permissibility of an officer's participation should be referred to the City Attorney before a contracting decision is made.