



## OHIO ETHICS COMMISSION

150 EAST BROAD STREET

COLUMBUS 43215

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Advisory Opinion No.78-005

August 4, 1978

Syllabus by the Commission:

1) As used in Section 2921.42 of the Revised Code, an "interest" in a public contract must be a definite, direct interest in order to constitute a violation.

2) Section 2921.42 (A)(1) of the Revised Code does not prohibit a county commissioner from voting to approve the issuance of an industrial revenue bond to a company which is a client of an accounting firm in which her husband is a partner, if the husband's sole interest is a distributive share of the fees earned by his firm for accounting services rendered to the company seeking the bond.

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In your request for an Ohio Ethics Commission Advisory Opinion, you asked whether Section 2921.42 of the Revised Code would prohibit a county commissioner from voting to approve the issuance of an industrial revenue bond to a company which is a client of her husband's accounting firm.

You state, by way of history, that you are a county commissioner, and in that capacity serve on the board of the local community improvement corporation, under Section 1724.10 of the Revised Code. Your husband is a partner in an accounting firm which does business with companies that have applied for industrial revenue bonds, which are issued under Chapter 165. of the Revised Code by the board of county commissioners, based on the recommendation of the community improvement corporation. You note that in the past you have abstained from voting to approve the issuance of industrial revenue bonds to any company that you know to be a client of your husband's firm.

Section 2921.42 (A)(1) of the Revised Code provides:

"(A) No public official shall knowingly do any of the following:

(1) Authorize, or employ the authority or influence of his office to secure the authorization of any public contract in which he, a member of his family, or any of his business associates has an interest."

In Advisory Opinion No. 78-003, the Ohio Ethics Commission concluded that a county commissioner is a "public official" and the issuance of industrial revenue bonds is a "public contract" for purposes of Section 2921.42 of the Revised Code. Thus, Section 2921.42 (A)(1) of the Revised Code would prohibit a county commissioner from knowingly authorizing or using

the authority or influence of her office to secure authorization of an industrial revenue bond in which she, a member of her family, or any of her business associates has an interest.

Section 2921.42 (A)(1) of the Revised Code requires that the prohibited interest of the public official, family member, or business associate be a definite, direct interest. [See: Powers v. City of Cincinnati, 187 N.E. 305, 45 Ohio App. 455 (1933), Board of Education v. Ferguson, Case No. 74 C.A. 32, Seventh District Court of Appeals (1974)]. An accountant is not considered to have an "interest" in the business dealings of his client merely because he receives a fee for professional services rendered for his client. Rule 101 of the Code of Ethics of the Ohio Society of Certified Public Accountants specifically prohibits an accountant from rendering an opinion on the financial statement of any enterprise in which he has "any direct or material indirect financial interest."

In the instant case, the husband's sole interest in the issuance of the industrial revenue bond is a distributive share of the fees earned by his accounting firm for services rendered to the company seeking the industrial revenue bond. We conclude, therefore, that under the facts as presented, the husband's "interest," which is limited to a partnership share of the fees for accounting services to a client of his accounting firm, is not sufficiently definite and direct to constitute an interest in a public contract for purposes of Section 2921.42 (A)(1) of the Revised Code. Therefore, under the facts as presented, Section 2921.42 (A)(1) of the Revised Code does not prohibit the county commissioner from voting to approve the issuance of an industrial revenue bond to a company which is a client of her husband's accounting firm.

The conclusions of this advisory opinion are based upon an examination of facts and circumstances of the instant case as you have presented them. The Ohio Ethics Commission cautions that its advisory opinions may be relied upon only with respect to questions arising under Chapter 102. or Section 2921.42 of the Revised Code and do not address possible violations of other laws or rules.

Therefore, it is the conclusion of the Ohio Ethics Commission, and you are so advised, that: 1) as used in Section 2921.42 of the Revised Code, an "interest" in a public contract must be a definite, direct interest in order to constitute a violation; and 2) Section 2921.42 (A)(1) of the Revised Code does not prohibit a county commissioner from voting to approve the issuance of an industrial revenue bond to a company which is a client of an accounting firm in which her husband is a partner, if the husband's sole interest is a distributive share of the fees earned by his firm for accounting services rendered to the company seeking the bond.

  
F. Herbert Hoffman, Jr. - Chairman  
The Ohio Ethics Commission