



OHIO ETHICS COMMISSION

150 EAST BROAD STREET

COLUMBUS 43215

(614) 466-7090

Advisory Opinion No. 79-001

January 19, 1979

Syllabus by the Commission:

1) Division (D) of Section 102.03 of the Revised Code prohibits a county prosecuting attorney from using or attempting to use his official position to secure anything of value for himself, including the proceeds of a contract with the county welfare department to provide child support enforcement, that would not ordinarily accrue to him in the performance of his official duties and that is of such character as to manifest a substantial and improper influence upon him with respect to his duties.

2) Division (A) (1) of Section 2921.42 of the Revised Code prohibits a county prosecuting attorney from knowingly authorizing or using the authority or influence of his office to secure authorization of a public contract, including a contract with the county welfare department to provide child support enforcement, in which he has an interest, directly or indirectly.

3) Division (A) (4) of Section 2921.42 of the Revised Code prohibits a county prosecuting attorney from knowingly having a personal interest in the profits or benefits of a contract with the county welfare department to provide child support enforcement.

You asked whether the Ohio Ethics Law or Section 2921.42 of the Revised Code would prohibit a county prosecutor from refusing to provide child support enforcement services for the county welfare department and offering to undertake the contract himself as a private attorney or refer it to his law partner.

You state, by way of history, that the Ohio Department of Public Welfare (hereinafter Department) operates a child support enforcement program, under which the Department passes through to county welfare departments money from the federal government to reimburse 75 per cent of the administrative costs of the local child support enforcement program. Under this program, the county welfare department contracts with law enforcement related agencies, including county prosecutors, sheriffs, and bureaus of support, to provide the necessary child support enforcement services, and the Department reviews the contracts and approves or disapproves the federal reimbursement. Thus, the prosecuting attorney's office provides legal assistance to persons seeking enforcement of child support and receives reimbursement for the services of the staff under a contract with the county welfare department. Under the facts you presented, a county prosecutor has declined to enter into such a child support enforcement contract with the county welfare department, stating that such a contract was inappropriate for his office and that he did not have sufficient budget to provide the services. However, the prosecutor offered to undertake the contract as a private attorney or refer the contract to his law partner. You asked whether the Ohio Ethics Law, particularly Section 102.03 (D) of the Revised

Code, or Section 2921.42 of the Revised Code would prohibit such an arrangement. Division (D) of Section 102.03 of the Revised Code provides:

"No public official or employee shall use or attempt to use his official position to secure anything of value for himself that would not ordinarily accrue to him in the performance of his official duties, which thing is of such character as to manifest a substantial and improper influence upon him with respect to his duties."

Under the facts you presented: 1) a county prosecuting attorney is a "public official or employee" as that term is defined in Division (B) of Section 102.01 of the Revised Code; 2) his refusal to accept the contract as county prosecutor and his offer to perform the services as a private attorney would constitute use or attempted use of his official position to benefit himself; 3) the proceeds of a contract to provide child support enforcement services are something of value for purposes of this provision; 4) the contract proceeds are something that would not ordinarily accrue to the county prosecutor in the performance of his official duties, since the program is designed to provide reimbursement for the county prosecutor's office; and 5) the contract would be of such character as to manifest a substantial and improper influence upon the county prosecutor with respect to his duties. We conclude, therefore, that by refusing the contract to provide child support enforcement services for the county welfare department and by offering to undertake the contract himself, the prosecuting attorney would be in violation of Division (D) of Section 102.03 of the Revised Code.

Section 102.08 of the Revised Code authorizes the Ohio Ethics Commission to render advisory opinions interpreting Section 2921.42 as well as Chapter 102. of the Revised Code. Division (A) of Section 2921.42 of the Revised Code provides, in pertinent part:

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

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

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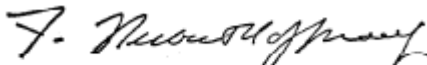
(4) Have an interest in the profits or benefits of a public contract entered into or by or for the use of the political subdivision or governmental agency or instrumentality with which he is connected."

Section 2921.42 of the Revised Code applies to any "public official," a term defined in Section 2921.01 (A) of the Revised Code to include a county prosecuting attorney. The term "public contract," as defined in Division (E) (1) of Section 2921.42, would comprehend the contract to provide child support enforcement services for the county welfare department. Division (A) (1) of Section 2921.42 of the Revised Code would prohibit a county prosecutor from knowingly authorizing or using the authority or influence of his office to secure authorization of a public contract, including a contract for child support enforcement, in which he or any of his business associates, including a law partner, has an interest. In addition, Division

(A) (4) of Section 2921.42 of the Revised Code would prohibit a county prosecuting attorney from knowingly having a personal interest in the profits or benefits of a contract for child support enforcement with the county welfare department of the county with which he serves, whether or not he has voted or otherwise used his position to secure authorization of the contract. The exemption of Division (B) and the exception of Division (C) of Section 2921.42 of the Revised Code do not apply under the facts that you have presented.

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

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that: 1) Division (D) of Section 102.03 of the Revised Code prohibits a county prosecuting attorney from using or attempting to use his official position to secure anything of value for himself, including the proceeds of a contract with the county welfare department to provide child support enforcement, that would not ordinarily accrue to him in the performance of his official duties and that is of such character as to manifest a substantial and improper influence upon him with respect to his duties; 2) Division (A) (1) of Section 2921.42 of the Revised Code prohibits a county prosecuting attorney from knowingly authorizing or using the authority or influence of his office to secure authorization of a public contract, including a contract with the county welfare department to provide child support enforcement, in which he has an interest, directly or indirectly; 3) Division (A) (4) of Section 2921.42 of the Revised Code prohibits a county prosecuting attorney from knowingly having a personal interest in the profits or benefits of a contract with the county welfare department to provide child support enforcement.


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

