



OHIO ETHICS COMMISSION

150 EAST BROAD STREET

COLUMBUS 43215

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Advisory Opinion No. : 80-001

January 11, 1980

Syllabus by the Commission:

1) Division (A)(1) of Section 2921.42 of the Revised Code prohibits a city council member from authorizing, voting, or otherwise using the authority or influence of his office to secure approval of a public contract in which his brother has an interest.

2) For purposes of Section 2921.42 of the Revised Code, the term "a member of his family" includes, but is not limited to: a) grandparents; b) parents; c) spouse; d) children, whether dependent or not; e) grandchildren; f) brothers and sisters; or g) any person related by blood or marriage and residing in the same household.

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In your request for an Ohio Ethics Commission Advisory opinion, you asked whether the Ohio Ethics Law and related statutes would prohibit a city council member from voting to approve a construction contract between the city and a company owned by the council member's brother.

You stated, by way of history, that the city council has been asked to approve a contract for the construction of a municipal building. Three firms have offered bids on the contract, including a firm owned by the brother of a city council member.

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.

A member of city council is a "public official" as that term is defined in Section 2921.01 and used in Section 2921.42 of the Revised Code. A contract for the construction of a municipal building is a "public contract" as that term is defined in Division (E) of Section 2921.42 of the Revised Code. Thus, Division (A)(1) of Section 2921.42 would prohibit a member of city council from authorizing, voting, or otherwise using the authority or influence of his office to secure approval of a public contract in which he, a member of his family, or any of his business associates has an interest.

The application of Division (A)(1) of Section 2921.42 of the Revised Code turns on whether the brother of a city council member is "a member of his family" for purposes of this Section. There is no definition of this phrase in the Ohio Ethics Law or Section 2921.42 of the Revised Code. Our research reveals that the term "family" is an indefinite, flexible term which may be construed differently as the circumstances require. [See: 16 Words and Phrases, Family; Black's Law Dictionary; 57 O. Jur 2d, Family] The term "immediate family" is defined in the Ohio Ethics Law (Division (D) of Section 102.01 of the Revised Code) as a "spouse residing in the person's household and any dependent child," which suggests that the phrase "a member of his family," as used in Section 2921.42 of the Revised Code, without the modifier "immediate," was intended to have a broader meaning. Section 267 (C)(4) of the Internal Revenue Code provides an example of a broader definition; it defines the family of an individual, for purposes of the ownership of stock, as "his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants."

The rules of statutory interpretation, the legislative history, and the context in which the phrase is used in Section 2921.42 of the Revised Code suggest that the phrase "a member of his family" be interpreted more broadly than the phrase "immediate family."

We conclude that for purposes of Section 2921.42 of the Revised Code, the term "a member of his family" includes, but is not limited to: 1) grandparents; 2) parents; 3) spouse; 4) children, whether dependent or not; 5) grandchildren; 6) brothers and sisters; or 7) any person related by blood or marriage and residing in the same household.

Therefore, Division (A)(1) of Section 2921.42 of the Revised Code prohibits a city council member from authorizing, voting, or otherwise using the authority or influence of his office to secure approval of a public contract in which his brother has an interest. In addition, even if the exemption of Division (C) of Section 2921.42 of the Revised Code is determined to be applicable, the city council member would still be prohibited by paragraph (4) of that Division from participating in discussions or deliberations and from voting to approve the contract.

It should be noted that this opinion would not prohibit the city council from accepting the contract, if the council member in question withdraws from all discussions and refrains from voting or otherwise using the authority or influence of his office to secure approval of the contract.

The conclusions of this advisory opinion are based on an examination of the facts 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 (A)(1) of Section 2921.42 of the Revised Code prohibits a city council member from authorizing, voting, or otherwise using the authority or influence of his office to secure approval of a public contract in which his brother has an interest; and 2) for purposes of Section 2921.42 of the Revised Code, the term "a member of his family" includes, but is not limited to: a) grandparents; b) parents; c) spouse; d) children, whether dependent or not; e) grandchildren; f)

brothers and sisters; or g) any person related by blood or marriage and residing in the same household.

Mary K. Lazarus

Mary K. Lazarus,
Chairperson

