



OHIO ETHICS COMMISSION

150 EAST BROAD STREET

COLUMBUS 43215

(614) 466-7090

Advisory Opinion No.: 81-001

March 5, 1981

Syllabus by the Commission:

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

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, who is an employee of a national brokerage firm,, from participating in council matters involving the firm by which he is employed.

You stated, by way of history, that you are a member of city council and are employed as a trainee security salesman by a national brokerage firm. The firm has been one of several co-managers of the underwriting of a bond issue for the city. In addition, the firm hopes to be involved in future city financial transactions, as follows: 1) the purchase of bond or anticipatory note issues of the city through competitive bidding; 2) negotiated transactions involving the purchase of bonds or notes; and 3) employment of the firm as a financial adviser to the city in connection with sales of bonds or notes. Each of these transactions would require city council approval. You stated further that the council member would not be directly involved in any of the transactions or have any direct interest in the firm other than his normal salary and commission from sales unrelated to city bond or note transactions. Finally, you stated that the council member would abstain from voting on any council legislation relating to the sales of bonds or notes by the municipality or any other matter in which his employer had a financial interest.

The pertinent provision in the instant case is Division (A)(1) of Section 2921.42 of the Revised Code, which 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.

The term "public official" is defined in Division (A) of Section 2921.01 of the Revised Code to include a member of city council, and each of the transactions described would constitute a "public contract" as defined in Division (E) of Section 2921.42 of the Revised Code. In Advisory Opinions No. 78-006 and 80-003, the Commission concluded that an employer is a "business associate" for purposes of this prohibition. The Commission also concluded that an

employee of a large firm, who holds no office in the firm, is not considered to be "interested" in the contracts of his employer for purposes of Section 2921.42 of the Revised Code. In the instant case, the council member's employer, his business associate, would be "interested" in the transactions described.

Therefore, Division (A)(1) of Section 2921.42 of the Revised Code prohibits a city council member from knowingly authorizing, voting, or otherwise using the authority or influence of his office to secure approval of a public contract, including legislation to authorize a bond or note sale or the employment of a financial adviser, in which his employer has an interest.

Your attention is directed to three provisions of the Ohio Ethics Law, Chapter 102. of the Revised Code. Division (A) of Section 102.03 of the Revised Code would prohibit a city council member from representing a private client, including his employer, before any public agency, on any matter in which he personally participated as a member of city council, even if he receives no compensation for such representation. Division (D) of Section 102.03 of the Revised Code prohibits a city council member from using or attempting to use his official position for personal gain or benefit. Division (C) of Section 102.04 of the Revised Code would prohibit a city council member from receiving compensation, directly or indirectly, except from the city, for any service rendered by him personally in any matter before the city.

The conclusions of this advisory opinion are based on the facts presented. The Commission cautions that its advisory opinions maybe 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, rules, or ordinances.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that Division (A)(1) of Section 2921.42 of the Revised Code prohibits a member of city council from knowingly authorizing ' voting, or otherwise using the authority or influence of his office to secure approval of a public contract in which his employer has an interest.


MEROM BRACHMAN, CHAIRMAN