



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
8 EAST LONG STREET, SUITE 210
COLUMBUS, OHIO 43215
(614) 466-7090

Advisory Opinion No. : 81-008
November 19, 1981

Syllabus by the Commission:

Division (A)(4) of Section 2921.42 of the Revised Code prohibits a city council member from serving on the board of a non-profit corporation that contracts to sell goods or services to the city.

* * * * *

You asked whether Section 2921.42 of the Revised Code prohibits a city council member from serving on the board of a non-profit corporation that contracts to sell goods or services to the city.

Division (A)(4) of Section 2921.42 of the Revised Code prohibits a public official from knowingly having an interest in the profits or benefits of a public contract entered into by or for the use of the governmental entity with which he serves. A city council member is a "public official" for purposes of this Section. The term "public contract" is defined in Division (E) of Section 2921.42 of the Revised Code to include the purchase or acquisition of goods or services by or for the use of the city.


Ohio Ethics Commission Advisory Opinions have defined the term "interest" as a definite, direct interest (opinion No. 78-005), which may be either pecuniary or fiduciary (opinion No. 81-003). In addition, the Commission has held that an officer or board member of a corporation has an interest in the contracts of the corporation (See: Advisory Opinion No. 81-003; see also: Advisory Opinions No. 79-004, 80-003, 80-006, and 81-005). A city council member who serves on the board of a non-profit corporation that contracts with the city has an "interest" in a contract between the corporation and the city, and thus is precluded by Division (A)(4) of Section 2921.42 of the Revised Code from serving on the board of the non-profit corporation. As observed by the legislative committee which enacted Section 2921.42, this dual interest creates a situation "in which there is a risk that private considerations may detract from serving the public interests."

Division (A)(4) of Section 2921.42 of the Revised Code does not prohibit a city council member from serving on the board of a non-profit corporation, unless that non-profit corporation contracts with the city.

The exemption of Division (C) of Section 2921.42 of the Revised Code is applicable to transactions which involve city purchase of goods or services that are: 1) otherwise unobtainable; 2) unavailable elsewhere for the same or a lower cost; or 3) furnished as part of a continuing course of dealing that existed prior to the council member's election.

The conclusions of this opinion are based on the facts presented, and are rendered only with regard to questions arising under Chapter 102. and Section 2921.42 of the Revised Code.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that Division (A)(4) of Section 2921.42 of the Revised Code prohibits a city council member from serving on the board of a non-profit corporation that contracts to sell goods or services to the city.


JOHN BENSON, CHAIRMAN
OHIO ETHICS COMMISSION