



## OHIO ETHICS COMMISSION

THE ATLAS BUILDING  
8 EAST LONG STREET, SUITE 210  
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Advisory Opinion Number 82-004  
June 2, 1982

### Syllabus by the Commission:

Division (A)(4) of Section 2921.42 of the Revised Code does not prohibit a city administrator or council member from serving on the board of a nonprofit corporation that receives funds through the city under a state litter control grant if he serves in his official capacity as required under the terms of the grant.

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You asked whether Section 2921.42 of the Revised Code prohibits a city administrator or council member from serving in his official capacity as a representative of the city government on the board of a non-profit corporation that receives funds through the city under a grant provided by the state Office of Litter Control.

You stated, by way of history, that the city has received a grant from the Office of Litter Control of the Ohio Department of Natural Resources. The funds have been transferred by the city as a subgrant to a non-profit corporation created for the sole purpose of promoting a clean community. (The corporation receives most of its funds from private charitable contributions; the Commission assumes that it receives no funds from the city other than under the state grant.) Under guidelines issued by the Office of Litter Control, the board of the non-profit corporation must include a city administrator or council member. You noted that Ohio Ethics Commission Advisory Opinion 81-008 held that Division (A)(4) of Section 2921.42 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 specifically whether this opinion may be distinguished when the composition of the board is mandated by the governmental entity providing the funds.

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 administrator or 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 state or any of its political subdivisions. Although the transaction is termed a "grant," it is subject to certain restrictions when it passes through the city to a non-profit corporation created for the express purpose of promoting community cleanliness and litter control. Thus, it would be a public contract for the purchase of services "by or for the use of" the city.

In Advisory Opinion No. 81-008, the Commission held that a city council member who serves on the board of a non-profit corporation that contracts with the city has a definite, direct,

fiduciary "interest" in a contract between the corporation and the city. This created a dual interest in which, as stated by the legislative committee that enacted Section 2921.42, "there is a risk that private considerations may detract from serving the public interest." Therefore, the council member was precluded by Division (A)(4) of Section 2921.42 of the Revised Code from serving on the board of the non-profit corporation.

However, in the instant case, the public official is required to serve on the board in his official capacity as a representative of the city. The presence of a city official is required, presumably to be certain that the funds from the grant are used in the public interest and within the guidelines of the Office of Litter Control. Therefore, this case is distinguishable from the facts in Advisory Opinion No. 81-008; the city administrator or council member would not have a prohibited "interest" in a public contract.

The conclusions of this opinion are based on the facts presented, and are rendered only with regard to the 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 does not prohibit a city administrator or council member from serving on the board of a non-profit corporation that receives funds through the city under a state litter control grant if he serves in his official capacity as required under the terms of the grant.

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