



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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Advisory Opinion No. 84-003
March 15, 1984

Syllabus by the Commission:

The Ohio Ethics Law and related statutes do not prohibit a township from acquiring, either by direct purchase or eminent domain proceeding, real property owned by the wife of a township trustee, provided that the township trustee does not participate in discussions, deliberations, or votes, or otherwise use the authority or influence of his office, to secure approval of the acquisition or appropriation.

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You asked whether the Ohio Ethics Law and related statutes prohibit a township from acquiring, either by direct purchase or eminent domain proceeding, real property owned by the wife of a township trustee and located adjacent to the existing township cemetery, provided that the township trustee does not participate in discussions, deliberations, or votes on the transaction.

Division (A)(1) of Section 2921.42 of the Revised Code prohibits a public official from authorizing, voting, or otherwise using the authority or influence of his office to secure approval of a public contract in which he, a family member, or a business associate has an interest. A township trustee is a "public official" as defined in Division (A) of Section 2921.01 of the Revised Code. The purchase or acquisition of real property by or for the use of the township is a "public contract" as defined in Division (E)(1) of Section 2921.42 of the Revised Code. The wife of a township trustee is a family member, and she would have an interest in a public contract if the township were to purchase real property that she owns (See: Ohio Ethics Commission Advisory Opinion No. 80-001). Therefore, a township trustee is prohibited by Division (A)(1) of Section 2921.42 of the Revised Code from participating in deliberations, discussions, or votes on a contract between the township and his wife for the purchase of real property adjacent to a township cemetery. Furthermore, the township trustee must not otherwise use the authority or influence of his office to secure authorization of the transaction. However, assuming that the township trustee refrains from participation in deliberations, and abstains from voting or otherwise using the authority or influence of his office to secure approval of the contract, the other two trustees may enter the contract for the purchase of real property.

This analysis and result would be the same if the township trustees were acquiring the property by initiating an eminent domain proceeding, rather than by merely purchasing it. In an eminent domain proceeding, the state exercises its sovereign power to take or appropriate private property for a public purpose or use. See Chapter 163. of the Revised Code. Townships have been delegated the authority to appropriate land for cemetery purposes. See Sections 517.01 and 517.13 of the Revised Code. The board of township trustees declares that certain property is required for a public purpose and initiates proceedings to acquire or appropriate such property.

The Ohio Constitution provides that the owner of private property taken by eminent domain is entitled to compensation for the loss of property. See Ohio Const. art. I, §19. Fair market value is the chief criterion for determining the value of property taken in an eminent domain proceeding. In re Appropriation of Easement for Highway Purposes: Director of Highways v. Bennett 118 Ohio App. 207 (Ohio Ct. App. 1962). Thus, the eminent domain proceeding is in the nature of a compulsory sale of property to the state or one of its political subdivisions. Even if the transaction in question is not the sale and purchase of property in the traditional sense, the township is acquiring property as a result of the eminent domain proceeding. Therefore, the transaction is a "public contract" as defined in Division (E)(1) of Section 2921.42 of the Revised Code, and the township trustee is prohibited from participating in discussions, voting, or otherwise using the authority or influence of his office to secure authorization of the eminent domain proceeding.

Whether the property for the township cemetery is acquired by direct purchase or by eminent domain proceeding, the board of township trustees must declare that the property is required for a public purpose. The township trustee whose wife owns the property is prohibited from participating in discussions or votes on this initial resolution, or on any subsequent issue before the trustees concerning the acquisition or appropriation of the property.

Division (A)(4) of Section 2921.42 of the Revised Code prohibits a public official from having an interest in a public contract with the entity of government with which he serves, even if he were to refrain from authorizing, voting, or otherwise using the authority or influence of his office to secure approval of the transaction. Thus, the prohibition of Division (A)(4) of Section 2921.42 of the Revised Code would apply if the township trustee had an ownership interest in the property. However, the facts indicate that the real property is uniquely situated adjacent to the existing cemetery. Consequently, the exemption of Division (C) of Section 2921.42 of the Revised Code could apply under the narrow circumstances described, provided that all the criteria of the exemption are met.

The conclusions of this opinion are based on the facts presented and are rendered 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 the Ohio Ethics Law and related statutes do not prohibit a township from acquiring, either by direct purchase or eminent domain proceeding, real property owned by the wife of a township trustee, provided that the township trustee does not participate in discussions, deliberations, or votes, or otherwise use the authority or influence of his office, to secure approval of the acquisition or appropriation.


Richard D. Jackson, Chairman
OHIO ETHICS COMMISSION