



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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Advisory Opinion No. 84-007
April 19, 1984

Syllabus by the Commission:

Division (D) of Section 102.03 of the Revised Code prohibits a district supervisor of oil and gas well inspectors employed by the Division of Oil and Gas of the Department of Natural Resources from reviewing or supervising the inspection or regulation of a gas or oil well in which he has an interest.

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You asked whether the Ohio Ethics Law and related statutes prohibit a district supervisor of oil and gas well inspectors employed by the Division of Oil and Gas of the Department of Natural Resources (hereinafter Department) from: (1) owning property in his district on which a gas and oil well is located; and (2) serving on the committee acting for a retirement community in which he owns property to negotiate a lease of oil and gas rights to common areas within the community.

You stated, by way of history, that the Division of Oil and Gas of the Department of Natural Resources has the principal statutory responsibility for the enforcement of laws governing oil and gas recovery. The Division of Oil and Gas has enacted detailed regulations regarding oil and gas conservation, well safety, the disposal of liquid oil field waste, the protection of surface and underground water, and other surface and environmental impacts of oil and gas recovery operations. Oil and gas well inspectors have the duty to enforce such laws, rules, and regulations under Chapter 1509. of the Revised Code. You stated further that the employee who is the subject of this inquiry is a district supervisor for the Department's oil and gas well inspectors. The employee owns property in a retirement community located within the district over which he has jurisdiction, and serves on a committee acting for the retirement community to lease the oil and gas rights to certain common areas within the retirement community which are not individually owned.

Division (D) of Section 102.03 of the Revised Code provides:

No public official or employee shall use or attempt to use his official position to secure anything of value for himself that would not ordinarily accrue to him in the performance of his official duties, which thing is of such character as to manifest a substantial and improper influence upon him with respect to his duties.

The pertinent elements of Division (D) of Section 102.03 of the Revised Code are: (1) a public official or employee; (2) is prohibited from using or attempting to use his official position; (3) to secure anything of value for himself; (4) the thing of value would not ordinarily accrue to the official or employee in the performance of his official duties; and (5) the thing of value is of

such character as to manifest a substantial and improper influence upon him with respect to his duties. A district supervisor of oil and gas well inspectors is a "public official or employee" as defined in Division (B) of Section 102.01 of the Revised Code, and fees, payments, or royalties from the sale of oil and gas drilling rights are within the definition of "anything of value" in Section 1.03 of the Revised Code.

In the instant case, a district supervisor for oil and gas well inspectors is prohibited from using his official position with respect to the oil and gas rights on property he owns individually or in common with others in a retirement community. Fees, payments, or royalties from an oil or gas well would not ordinarily accrue to the district supervisor in the performance of his official duties, and such a transaction would manifest a substantial and improper influence upon him with respect to his duties because he or his employees would be inspecting or otherwise regulating oil and gas wells in which he had an interest. Business transactions with respect to the leasing of the wells or the distribution of the royalties with respect to such wells could impair his independence of judgment with regard to the lessee's compliance with state laws, rules, and regulations, and his regulatory authority could be used coercively with respect to the parties involved. (See: Ohio Ethics Commission Advisory Opinions No. 79-007, 82-001, and 83-007). Furthermore, such an arrangement creates the appearance of impropriety.

However, the Ohio Ethics Law and related statutes do not, per se, prohibit an employee of the Division of Oil and Gas of the Department of Natural Resources from owning property on which an oil and gas well is located, or from serving on a community committee to lease oil and gas rights. It prohibits him from using his position improperly to derive a personal or pecuniary benefit. The crucial element in this case is the regulatory authority that the district supervisor has over oil and gas drilling operations in which he has an interest.

Your attention is directed to Division (A) of Section 102.03 of the Revised Code, which prohibits a public official or employee, from representing a client or acting in a representative capacity for any person on any matter in which he personally participates in his official capacity. This provision would prohibit a district supervisor of oil and gas well inspectors from representing the community, the committee, the lessee of on and gas rights, or himself as a property owner, in matters before the Department in which he has participated in his official capacity.

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 Commission, and you are so advised, that Division (D) of Section 102.03 of the Revised Code prohibits a district supervisor of oil and gas well inspectors employed by the Division of Oil and Gas of the Department of Natural Resources from reviewing or supervising the inspection or regulation of a gas or oil well in which he has an interest.


Richard D. Jackson, Chairman
OHIO ETHICS COMMISSION