



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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Advisory Opinion Number 85-002
April 11, 1995

Syllabus by the Commission:

- (1) Division (A)(1) of Section 2921.42 of the Revised Code prohibits a city mayor from authorizing or otherwise using the authority or influence of his office to secure approval of a public contract in which his brother has an interest.
- (2) A mayor's brother who is an officer and partner of a firm under contract with a developer to procure tenants for property renovated with a city loan does not have a sufficiently definite and direct interest in the loan to constitute an "interest" in a public contract for purposes of Section 2921.42 of the Revised Code.
- (3) A mayor's brother who is under contract with a savings bank to negotiate a lease and option to purchase real property upon which a commercial office building will be constructed with partial financing from a city grant does not have a sufficiently definite and direct interest in the grant to constitute an "interest" in a public contract for purposes of Section 2921.42 of the Revised Code.

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You asked whether the Ohio Ethics Law and related statutes would prohibit a city mayor from authorizing or otherwise participating in the following transactions: (1) a contract under which the city will provide a "float loan" from a federal community development block grant to a developer for the renovation of property for tenant occupancy, if the mayor's brother is an officer and partner in a firm under contract with the developer to provide tenant procurement services; and (2) a contract under which the city will provide partial financing from a federal urban development action grant to a savings bank for the construction of a commercial office building on a parcel of downtown urban renewal land, if the mayor's brother is under contract with the bank to negotiate a lease and option to purchase the property from the landowner who purchased it from the city some years ago.

You stated, by way of history, that you are the mayor of a municipality that administers funds from the federal community development block grant and urban development action grant programs. You stated further that your brother is an officer and partner in a real estate firm that has contracted to provide tenant procurement services to a developer that seeks a loan from the city to renovate existing space. Also, your brother has contracted to negotiate a lease with an option to purchase land for a savings bank that seeks partial financing from the city to construct a commercial office building on the land, which is located in an urban renewal area. You indicated that your brother will receive a finders' fee for negotiating the agreement, but it is not known whether his firm will be a leasing agent, tenant, or equity participant. Depending on the structure

of the land transaction, city approval may be required. Also, you stated that city council and the mayor are required to authorize these city loans or grants. However, you stated that the city will not contract directly with your brother or his firm. You asked whether the Ohio Ethics Law and related statutes would prohibit you from authorizing or otherwise participating in these transactions. If so, you also asked whether the transactions would be permitted if you refrain from the following: 1) influencing or approving any legislation; 2) participating in any discussions, or signing any contracts, grant applications, or other documents related to these matters; and 3) advocating either project, formally or informally.

Section 2921.42 of the Revised Code provides the following, 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;

(2) Authorize, or employ the authority or influence of his office to secure the investment of public funds in any share, bond, mortgage, or other security with respect to which he, a member of his family, or any of his business associates either has an interest, is an underwriter, or receives any brokerage, origination, or servicing fees.

A city mayor is a "public official" as defined in Division (A) of Section 2921.01 of the Revised Code. A loan provided by the city for the renovation of property under a federal community development block grant is a "public contract" as defined in Division (E)(1) of Section 2921.42 of the Revised Code, since it is the purchase or acquisition of community development or urban renewal services by the city. In addition, it constitutes the "investment of public funds," since the city receives interest on the transaction; however, it does not appear to be an investment in any security in which his brother has an interest, underwrites, or receives a fee. The mayor's brother is "a member of his family" for purposes of Section 2921.42 of the Revised Code (See: Ohio Ethics Commission Advisory Opinion No. 80-001). Therefore, the city mayor would be prohibited from authorizing or otherwise using the authority or influence of his office to secure approval of a loan from the city under a community development block grant if his brother has an interest in the contract.

For purposes of these prohibitions, the "interest" of a family member must be definite and direct, and may be either pecuniary or fiduciary (See: Ohio Ethics Commission Advisory Opinions No. 78-005, 81-003, and 81-008). In addition, a subcontract under a public contract is also a "public contract" as defined in Division (E)(1) of Section 2921.42 of the Revised Code (See: Ohio Ethics Commission Advisory Opinion No. 82-007). A board member or an officer of a firm is "interested" in the contracts of the firm. Thus, the primary issue is whether the contract between the developer and the firm in which the mayor's brother is an officer and partner is either an "interest" in the city contract for the "float loan" or a "subcontract" under that principal contract.

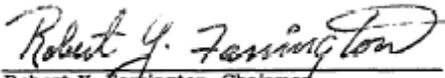
Under the facts presented, the loan transaction is between the city and the developer; neither the mayor's brother nor his firm is a party. Also, the contract between the developer and the firm is not a "subcontract" under the principal contract to finance the renovation of certain properties, since neither the mayor's brother nor his firm is being engaged to perform the whole or part of the renovation. The procurement of tenants is important to the enterprise, but the interest of the mayor's brother in this contract is not a definite and direct interest in the city loan to the developer. Thus, it appears that the contract represents, at most, an indirect interest in the loan between the developer and the city. Finally, neither the mayor's brother nor his firm is an underwriter, and the fees for tenant procurement services do not represent brokerage, origination, or servicing fees for the transaction. Thus, the prohibitions of Divisions (A)(1) and (A)(2) of Section 2921.42 of the Revised Code would not apply.

The second transaction involves a city contract to provide partial financing under a federal urban development action grant to a savings bank for the construction of a commercial office building on a parcel of downtown urban renewal land. This contract also is a "public contract" as defined in Division (E)(1) of Section 2921.42 of the Revised Code, since it is the purchase or acquisition of community development or urban renewal services by the city. The transaction is also the "investment of public funds," since the city receives interest on the transaction. However, it does not appear to be the investment in any security in which the mayor's brother has an interest, underwrites, or receives a fee. Once again, the primary issue is whether the "finders' fee" received by the mayor's brother from a savings bank for negotiating an agreement between the landowner and the bank for a lease and option to purchase the real property is an "interest" in the city contract. Neither the mayor's brother nor his firm is a party to the financing contract. Clearly, the finders' fee would be an interest in the underlying transaction involving the lease and option to purchase the real property. However, this underlying transaction would not be with the city, since it no longer owns the land. Also, it is not a subcontract under the principal contract, even though it is a crucial transaction. The interest of the mayor's brother in the land transaction is not a definite and direct interest in the city grant to the savings bank. Thus, the prohibitions of Divisions (A)(1) and (A)(2) of Section 2921.42 of the Revised Code would not apply. This result would be different if the mayor's brother or his firm had an equity interest in the commercial office building.

Nevertheless, the business interests of the mayor's brother are related to two community development or urban renewal projects dependent upon financing provided by the city. The mayor of the city is responsible for the administration of these programs, and in both cases, his brother would benefit indirectly from the financing. Therefore, it would create the appearance of impropriety if he authorized or participated in the transactions. Thus, the mayor should refrain from the following: 1) influencing or approving any legislation; 2) participating in any discussions, or signing any contracts, grant applications, and other documents related to these matters; or 3) advocating either project, formally or informally. If these tasks are delegated to someone under the mayor's supervision, the approval of the contracts still could create the appearance of a conflict of interest. However, the approval of city council would provide independent review.

This advisory opinion is based on the facts presented, and is 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: (1) Division (A)(1) of Section 2921.42 of the Revised Code prohibits a city mayor from authorizing or otherwise using the authority or influence of his office to secure approval of a public contract in which his brother has an interest; (2) A mayor's brother who is an officer and partner of a firm under contract with a developer to procure tenants for property renovated with a city loan does not have a sufficiently definite and direct interest in the loan to constitute an "interest" in a public contract for purposes of Section 2921.42 of the Revised Code; and (3) A mayor's brother who is under contract with a savings bank to negotiate a lease and option to purchase real property upon which a commercial office building will be constructed with partial financing from a city grant does not have a sufficiently definite and direct interest in the grant to constitute an "interest" in a public contract for purposes of Section 2921.42 of the Revised Code.


Robert Y. Farrington, Chairman
OHIO ETHICS COMMISSION