



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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Advisory Opinion Number 85-006
June 20, 1985

Syllabus by the Commission:

The Ohio Ethics Law and related statutes do not, per se, prohibit a realtor from serving on a city planning commission, but condition his conduct while serving.

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You asked whether the Ohio Ethics Law and related statutes prohibit a realtor from serving on a city planning commission.

You stated, by way of history, that a city recently appointed a realtor as a member of the city planning commission. You stated further that a citizen has objected to the appointment on the grounds that a realtor has a professional interest in residential development that would conflict with his duties on the planning commission. You asked whether a realtor, by reason of his occupation, is prohibited from serving.

Division (D) of Section 102.03 of the Revised Code, the "conflict of interest" prohibition of the Ohio Ethics Law, 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.

A member of a city planning commission is a "public official or employee" as defined in Division (B) of Section 102.01 of the Revised Code. Section 1.03 of the Revised Code defines "anything of value" to include money, goods, promissory notes, personal and real property, promises of future employment, and other things of value. Thus, the issue is whether a realtor who serves on a city planning commission would secure anything of value for himself that would not ordinarily accrue to him in the performance of his official duties, and that would have a substantial and improper influence upon him with respect to those duties.

Ohio Ethics Commission Advisory Opinion No. 79-008 concluded that Division (D) of Section 102.03 of the Revised Code prohibits a city council member from voting on a zoning change affecting real property owned by his wife. In that case, the public official was prohibited from voting or otherwise using his official position to secure a particular zoning change or variance, since he would derive a definite, pecuniary benefit by his official action, and the benefit was of such character as to have substantial and improper influence upon him with

respect to the performance of his official duties. Similarly, Advisory Opinion No. 79-003 held that Division (D) of Section 102.03 of the Revised Code prohibits a member of a township zoning commission from voting to approve a zoning change or variance for property in which he has a commission interest as a real estate agent. In that opinion, the real estate agent was not prohibited from serving; he merely was prohibited from taking part in the particular decision in which he had a personal, pecuniary interest.

In general, the Commission has not ruled that an individual's private employment would, per se, prohibit him from holding a particular office or employment, absent additional facts indicating an actual conflict of interest (See: Advisory Opinion No. 84-012). Usually, the Ohio Ethics Law and related statutes merely prohibit a person from engaging in conflicts of interest while serving. Although there may be some public offices that are inherently incompatible with certain types of private employment (See: Advisory Opinion No. 84-009), the instant case does not present such a situation. Although a realtor may have a general economic interest in residential development, it is not clear that every issue before a city planning commission would implicate his personal, pecuniary interest. Indeed, it would be necessary to demonstrate that such an inherent conflict of interest exists before excluding a duly elected or appointed official from serving in his office. Thus, Division (D) of Section 102.03 of the Revised Code does not, per se, prohibit a realtor from serving on a city planning commission.

However, Division (D) of Section 102.03 of the Revised Code would condition the realtor's conduct while serving. A city planning commission would consider many issues that may have a particular financial or economic impact on certain real estate interests. Thus, a realtor serving on a city planning commission, as well as every other member of the commission, should review each issue to determine whether he, his firm, or his immediate family has a private, pecuniary interest that may conflict with his public duty. If a certain decision would result in the realtor securing a definite, pecuniary benefit that would not ordinarily accrue to him in the performance of his official duties, and that would be of such character as to manifest a substantial and improper influence on him with respect to those duties, he must refrain from participating in discussions or voting on the issue.

Of course, the application of the prohibition is dependent upon the facts and circumstances of the particular case. Not all "conflicts of interest" are prohibited by Division (D) of Section 102.03 of the Revised Code, but only those in which a public official has a dual interest that would impair his independence of judgment in making decisions. For example, many general issues before local governmental bodies would provide a uniform benefit to all citizens in a jurisdiction, including the public officials making the decision. This would include general legislation on such matters as taxes, police and fire protection, schools, zoning, sewer and water services, and parks. In most cases, the benefits derived by the public officials in common with their constituents would ordinarily accrue to them in the performance of their official duties, and would not be of such character as to manifest a substantial and improper influence on them. Furthermore, it is not sufficient merely to identify some indirect or indefinite benefit that a public official may accrue from the performance of an official act. A public official should not be precluded from participating in such decisions that he was duly elected or appointed to make, unless he would secure a particular benefit for himself that creates a conflict of interest.

Other provisions of Chapter 102. and Section 2921.42 of the Revised Code also would condition a realtor's conduct while serving on a city planning commission. For example, Division (A) of Section 102.03 of the Revised Code would prohibit him from representing his employer or a private client before the city planning commission or any other city agency on any matter in which he has personally participated as a public official. Division (B) of Section 102.03 of the Revised Code would prohibit him from misusing confidential information. Division (C) of Section 102.04 of the Revised Code would prohibit him from receiving compensation from his employer or a private client for personal services rendered in a case, proceeding, application, or other matter before any agency of the city, excluding the courts. Division (A)(1) of Section 2921.42 of the Revised Code would prohibit him from participating in discussions, 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. Finally, Division (A)(4) of Section 2921.42 of the Revised Code would prohibit him from having any interest in a public contract with the city with which he is connected.

The conclusions of this opinion are based on the facts presented, and are limited 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, per se, prohibit a realtor from serving as a member of a city planning commission, but condition his conduct while serving.


Robert Y. Farington, Chairman
OHIO ETHICS COMMISSION