



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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COLUMBUS, OHIO 43215
(614) 466-7090

Advisory Opinion Number 85-011
September 5, 1985

Syllabus by the Commission:

The Ohio Ethics Law and related statutes do not prohibit the spouse of a city law director from leasing retail space in a building constructed by a developer on land purchased from the city under a revolving loan program, provided that the law director does not use his official position to secure the lease for his spouse.

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You asked whether the Ohio Ethics Law and related statutes would prohibit the spouse of a city law director from leasing retail space in a building constructed by a developer on land purchased from the city through a revolving loan program.

You stated, by way of history, that a developer has formed a community redevelopment corporation that obtained a loan from the city and purchased land for an urban renewal project. You stated further that a strip shopping center is being constructed on the land. You indicated that the first phase, now under construction, will contain a grocery store and a drug store. The funds for the construction of this building were obtained from the U.S. Department of Housing and Urban Development and a local financial institution. You indicated that the second phase, to be constructed in the future, will contain specialty shops, and that no public funds will be used for this building. Finally, you stated that the spouse of the city law director seeks to lease retail space in this building for a greeting card shop. You indicated that the lease will be in her name only, and that she will be the sole owner of the business. You asked whether this arrangement would violate Chapter 102. or Section 2921.42 of the Revised Code.

Division (A) of Section 2921.42 of the Revised Code provides, 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;

...

(4) Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which he is connected.

A city law director is a "public official" as defined in Division (A) of Section 2921.01 of the Revised Code, since he is an elected officer of a political subdivision of the state. A loan from a city to a developer to purchase land for an urban renewal project is a "public contract" as defined in Division (E)(1) of Section 2921.42 of the Revised Code, since it is a contract for the purchase or acquisition of urban renewal services by or for the use of the city. Thus, the crucial issue is whether the lease agreement between the developer and the spouse of the law director is an "interest" in the underlying contract for the purchase of land, and if so, whether the law director would have any interest in the profits or benefits of the contract.

For purposes of Section 2921.42 of the Revised Code, an "interest" must be definite and direct (See: Ohio Ethics Commission Advisory Opinion No. 78-005). In Ohio Ethics Commission Advisory Opinion No. 85-002, the Commission held that a mayor's brother who is an officer and partner of a firm under contract with a developer to procure tenants for a property renovated with a city loan would 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. The opinion also held that 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 would 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. In each transaction, the loan or grant was between the city and the developer or savings bank, rather than between the city and the mayor's brother. While the mayor's brother would benefit indirectly from the loan or grant, he was not a party to the agreement or a subcontractor. Thus, it was determined that the mayor's brother did not have an "interest" in either transaction.

Similarly, the spouse of the city law director would benefit indirectly from the underlying transaction between the city and the developer, since she would be leasing retail space in a building constructed on land purchased under a city loan, but she would be neither a party to the public contract nor a subcontractor. At most, the spouse of the law director would have an indirect interest in the city loan. In addition, the law director would not have a direct interest in the lease or the retail business, since the greeting card shop will be owned and operated solely by his spouse. Thus, the prohibitions of Division (A) of Section 2921.42 of the Revised Code would not apply.

However, it should be noted that Division (D) of Section 102.03 of the Revised Code prohibits a public official or employee from using his official position for personal gain or benefit. It appears that the law director would obtain some pecuniary benefit from his wife's business. Thus, the law director must not use his official position to secure the lease for his spouse. In addition, he should refrain from any participation in the deliberations or decision concerning the transaction to avoid even the appearance of impropriety.

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: the Ohio Ethics Law and related statutes do not prohibit the spouse of a city law director from

leasing retail space in a building constructed by a developer on land purchased from the city under a revolving loan program, provided that the city law director does not use his official position to secure the lease for his spouse.


Robert Y. Farington, Chairman
OHIO ETHICS COMMISSION