



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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Advisory Opinion Number 86-004
April 10, 1986

Syllabus by the Commission:

- (1) Division (A)(1) of Section 2921.42 of the Revised Code prohibits a member of a regional authority who is a partner in a private law firm from voting, authorizing, or otherwise using the authority or influence of his office to secure approval of a contract between the authority and his firm.
- (2) Division (A)(4) of Section 2921.42 of the Revised Code prohibits a member of a regional authority who is a partner in a private law firm from having an interest in the profits or benefits of a contract between the authority and his firm.
- (3) Division (C) of Section 102.04 of the Revised Code does not prohibit a member of a regional authority who is a partner in a private law firm from receiving a distributive share of partnership profits generated by the representation of a client by another member of the firm on a case, proceeding, application, or other matter before the authority, provided he does not render the services personally.
- (4) Division (D) of Section 102.03 of the Revised Code prohibits a member of a regional authority who is a partner in a private law firm from participating in discussions, voting, or otherwise using his official position concerning a matter on which a party is represented by a member of his firm.

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You asked whether the Ohio Ethics Law or related statutes would prohibit: (1) a regional authority from contracting with a private law firm for legal services if a member of the authority is a partner in the firm; or (2) other members of the firm from representing private clients on matters before the authority.

You stated, by way of history, that a member of a regional authority is a partner in a private law firm. You stated further that the authority seeks to enter a contract with the firm for the provision of legal services. In addition, members of the firm seek to represent clients on matters before the authority, such as contracts or applications. You asked whether such activities would create a conflict of interest.

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 member of a regional authority is a "public official" as defined in Division (A) of Section 2921.01 of the Revised Code, since he is an appointed officer of a political subdivision of the state. A contract between the authority and a private law firm for the provision of legal services 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 legal services by or for the use of the governmental entity (See: Ohio Ethics Commission Advisory Opinions No. 74-001, 79-001, 83-002, 83-009, and 84-002). A partner in a law firm who receives a distributive share of partnership profits obtained by virtue of a contract between his firm and a governmental entity is deemed to be interested in the contract, even though he does not personally render the legal services (See: Advisory Opinion No. 78-001). Therefore, Division (A)(1) of Section 2921.42 of the Revised Code would prohibit a member of a regional authority who is a partner in a private law firm from voting, authorizing, or otherwise using the authority or influence of his office to secure approval of a contract between the authority and his firm for the provision of legal services. In addition, Division (A)(4) of Section 2921.42 of the Revised Code would prohibit him from having any interest in the profits or benefits of a public contract between the authority and his private law firm.

Division (C) of Section 102.04 of the Revised Code provides, in pertinent part:

Except as provided in Division (D) of this Section, no person who is elected or appointed to an office of or employed by a county, township, municipal corporation, or any other governmental entity, excluding the courts, shall receive or agree to receive directly or indirectly compensation other than from the agency with which he serves for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter which is before any agency, department, board, bureau, commission, or other instrumentality, excluding the courts, of the entity of which he is an officer or employee.

A member of a regional authority is a person appointed to an office of a governmental entity. Thus, Division (C) of Section 102.04 of the Revised Code would prohibit a member of a regional authority who is a partner in a private law firm from receiving compensation from a private client for personal services rendered on a matter before the regional authority, the governmental entity with which he serves. However, it would not prohibit him from receiving compensation from private clients for personal services rendered on matters before other governmental entities. In addition, he would not be prohibited from receiving a distributive share of partnership profits generated by personal services of other members of the firm representing

clients before the authority, provided that he does not render the personal services (See: Advisory Opinion No. 74-009). Of course, this assumes that no contract for legal services exists between the authority and the law firm.

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

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 regional authority is a "public official or employee" as defined in Division (B) of Section 102.01 of the Revised Code, since he is an appointed officer of a public agency (See also: Division (C) of Section 102.01 of the Revised Code). Fees or profits generated from a private law practice are within the definition of "anything of value" in Section 1.03 of the Revised Code. Such fees or profits would not ordinarily accrue to a member of a regional authority in the performance of his official duties, and would be of such character as to manifest a substantial and improper influence upon him in the performance of such duties, if he were to participate in a matter on which a party is represented by a member of his private law firm. Therefore, Division (D) of Section 102.03 of the Revised Code prohibits a member of a regional authority who is a partner in a private law firm from participating in discussions, voting, or otherwise using his official position concerning a matter before the regional authority on which a party is represented by a member of his firm.

This opinion has general application to attorneys serving as public officials or employees with all government agencies in state and local government. However, questions concerning the conduct of attorneys under the Code of Professional Responsibility are not within the jurisdiction of the Ohio Ethics Commission, and should be referred to the Office of the Disciplinary Counsel, Supreme Court of Ohio.

This advisory opinion is based on the facts presented, and is 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: (1) Division (A)(1) of Section 2921.42 of the Revised Code prohibits a member of a regional authority who is a partner in a private law firm from voting, authorizing, or otherwise using the authority or influence of his office to secure approval of a contract between the authority and his firm; (2) Division (A)(4) of Section 2921.42 of the Revised Code prohibits a member of a regional authority who is a partner in a private law firm from having an interest in the profits or benefits of a contract between the authority and his firm; (3) Division (C) of Section 102.04 of the Revised Code does not prohibit a member of a regional authority who is a partner in a private law firm from receiving a distributive share of partnership profits generated by the representation of a client by another member of the firm on a case, proceeding, application, or other matter before the authority provided he does not render the services personally; (4) Division (D) of Section 102.03 of the Revised Code prohibits a member of a regional authority who is a partner

in a private law firm from participating in discussions, voting, or otherwise using his official position concerning a matter on which a party is represented by a member of his firm.


Merom Brachman, Chairman
Ohio Ethics Commission