



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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Advisory Opinion Number 86-007
May 15, 1986

Syllabus by the Commission:

- (1) The Ohio Ethics Law and related statutes do not, per se, prohibit a person who has an interest in a private business licensed and regulated by a county board of health from serving as a member of the board, but would condition his conduct while serving.
- (2) Division (D) of Section 102.03 of the Revised Code prohibits a member of a county board of health from participating in discussions, voting, or otherwise using his official position on a licensing, regulatory, personnel, or other matter before the board which benefits his private business or himself.

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You asked whether the Ohio Ethics Law and related statutes would prohibit a member of a county board of health from serving or otherwise restrict his conduct if he or a family member owns a business that is licensed and regulated by the board.

You stated, by way of history, that a county board of health is considering candidates for membership on the board. You stated further that a number of these candidates or their family members own private businesses that are licensed and regulated by the board, including septic system installation services, eating establishments, and related businesses. You asked whether a board member is prohibited from serving or participating in matters concerning a business owned by himself or a family member. You also asked whether he would be prohibited from participating in matters concerning the employees who work directly in regulating such businesses.

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 county board of health 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. A pecuniary or fiduciary interest in a private business is within the definition of "anything of value" in Section 1.03 of the Revised Code. In addition, a licensing, regulatory, or

personnel decision by the board of health which benefits a person or his private business would also be within the definition. Such things of value would not ordinarily accrue to a member of a county board of health in the performance of his official duties, and would be of such character as to manifest a substantial and improper influence upon him with respect to any decision or vote on a matter concerning a private business in which he has a pecuniary or fiduciary interest. Therefore, Division (D) of Section 102.03 of the Revised Code prohibits a member of a county board of health from participating in discussions, voting, or otherwise using his official position to secure anything of value for himself or his private business.

Of course, the application of this prohibition is dependent upon the facts and circumstances of the particular case. However, it is clear that a member of a county board of health is prohibited from participating in discussions or voting on any license, regulation, or other matter concerning a private business owned by him. In addition, participation in certain issues concerning his competitors may present a "conflict of interest," if his private business were to benefit from a particular licensing or regulatory decision. Finally, participation in certain employee or personnel decisions may present a "conflict of interest," if the matters concern employees or personnel responsible for regulating the particular business in which the board member has a financial interest. The exact limitations and restrictions on the conduct of a particular board member can not be determined without additional facts. However, to avoid potential violations or even the appearance of impropriety, a board member who owns a business regulated by the county board of health should refrain from participating in discussions, voting, or otherwise using his official position on any matter or issue concerning the business or industry in which he has a pecuniary or fiduciary interest. If this restriction results in his being unable to perform adequately his official duties, it would be necessary to appoint a county board member who does not have any interest in a business regulated by or licensed by the agency with which he serves. Indeed, as a general rule, it would be preferable to avoid appointing regulated parties to the county board of health.

Division (D) of Section 102.03 of the Revised Code prohibits a public official from using or attempting to use his official position to secure anything of value for himself. It does not apply to things of value accruing to a family member or business associate, provided the public official does not benefit personally. However, it would create the appearance of impropriety for a member of a county board of health to participate in discussions or vote on matters concerning the licensing or regulation of a business owned by a family member or business associate, even though he has no personal financial interest. This would be consistent with Division (A)(1) of Section 2921.42 of the Revised Code, which prohibits a public official 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.

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) The Ohio Ethics Law and related statutes do not, per se, prohibit a person who has an interest in a private business licensed and regulated by a county board of health from serving as a member of the board, but would condition his conduct while serving; and (2) Division (D) of

Section 102.03 of the Revised Code prohibits a member of a county board of health from participating in discussions, voting, or otherwise using his official position on a licensing, regulatory, personnel, or other matter before the board which benefits his private business or himself.


Merom Brachman, Chairman
Ohio Ethics Commission