



OHIO ETHICS COMMISSION

THE ATLAS BUILDING 1200
8 EAST LONG STREET, SUITE 1200
COLUMBUS, OHIO 43215-2940
(614) 466-7090

Advisory Opinion Number 87-009
November 30, 1987

Syllabus by the Commission:

(1) Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a member of city council from serving as the agent for landowners who have petitioned to have their property annexed to the city which he serves, and from serving as the agent's attorney;

(2) Division (C) of Section 102.04 of the Revised Code prohibits a member of city council from receiving directly or indirectly compensation for personally representing or providing any other service for landowners on their application for annexation pending before city council.

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You have asked whether the Ohio Ethics Law and related statutes prohibit a member of city council from serving as the agent for real estate owners who are petitioning for the annexation of their property to the city which he serves as a council member. You also wish to know whether a city council member may serve as the attorney for the petitioners' agent.

Divisions (D) and (E) of Section 102.03 read as follows:

(D) No public official or employee shall use or authorize the use of the authority or influence of his office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties.

(E) No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties.

The term "public official or employee" is defined for purposes of R.C. 102.03 to include any person who is elected or appointed to any division, board, bureau, or other instrumentality of a city. See R.C. 102.01(B) and (C). A member of city council is, therefore, a "public official or employee" for purposes of R.C. 102.03, and is subject to the prohibitions of Divisions (D) and (E) of that section. See Ohio Ethics Commission Advisory Opinions No. 80-007 and 86-002.

"Anything of value" is defined for purposes of R.C. 102.03(D) and (E) to include money and every other thing of value. See R.C. 1.03 and 102.01(G). Payment received by a person acting as the agent or as the agent's attorney, for real estate owners petitioning for the annexation

of their property to a municipal corporation is included within the definition of anything of value. See Advisory Opinions No. 79-002, 82-001, 84-012, and 86-004. The issue is, therefore, whether the payment is of such a character as to manifest a substantial and improper influence upon a city council member with respect to his duties.

Owners of real estate adjacent to a municipal corporation who wish to have their property annexed to the municipal corporation must apply, by petition, to the board of county commissioners of the county in which the property is located. R.C. 709.02. The petition must be signed by a majority of the owners of real estate in the territory to be annexed, and must include the name of a person or persons to act as agent for the petitioners. Id. The board of county commissioners must hold a hearing on the petition. R.C. 709.031. Interested persons may appear and support or contest the petition. R.C. 709.032. Any owner who signed the petition for annexation may testify that his signature was obtained by fraud, duress, misrepresentation, or undue influence, and persons may testify in support or rebuttal of the owner's testimony. Id. R.C. 709.032 provides that the agent for the petitioners or his attorney may examine such witnesses, including the owner. Pursuant to R.C. 709.033, the board of county commissioners shall, after the hearing, allow the annexation if it makes the findings specified in that section. If the board grants the petition for annexation, it must then refer the matter to the municipal corporation to which annexation is proposed. R.C. 709.033. The legislative authority of the municipal corporation, by resolution or ordinance, shall accept or reject the application for annexation. R.C. 709.04. If the resolution or ordinance is a rejection of the application for annexation, then no further proceeding shall be taken on the application. R.C. 709.05.

As set forth above, R.C. 102.03(D) and (E) prohibit a city council member from soliciting, accepting, or using the authority or influence of his office to secure anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties. The Ethics Commission has held that R.C. 102.03(D) and (E) prohibit a public official or employee from soliciting, accepting, or using his authority or influence to secure, anything of value from a party that is interested in matters before, regulated by, or doing or seeking to do business with, the public agency with which the official or employee serves. See Advisory Opinions No. 86-011 and 87-006. Further, a public official or employee is prohibited from holding a private position if such private position could impair his independence of judgment with regard to his official decisions or responsibilities. See Advisory Opinions No. 84-009, 85-006, and 87-006.

In this instance, it is apparent that land owners who have petitioned for annexation to a city are interested in a matter before the legislative authority of the city, since the city council must accept or reject the landowners' petition for annexation once the board of county commissioners allows the annexation. Therefore, a city council member is prohibited from accepting, soliciting, or using his authority or influence to secure anything of value, including payments for services rendered as an agent or as the agent's attorney, from landowners who have petitioned for annexation to the city. Because the petitioners' agent is also interested in the annexation petition before city council, a city council member would be prohibited from receiving payments from the agent, as well as from the landowners, to act as the agent's attorney.

As summarized in Advisory Opinion No. 87-006:

The Ethics Commission has consistently held that public officials and employees are not prohibited by the Ohio Ethics Law from holding outside, private positions so long as no actual conflict of interest exists between the officials or employee's public and private positions. See Advisory Opinions No. 85-006 and 86-008. If, however, a public officials or employee's private position could impair his independence of judgment with regard to his official decisions and responsibilities, and thus, is of such a character as to manifest a substantial and improper influence upon him, the public official or employee is prohibited from holding such private position. See Advisory Opinions No. 84-009 and 85-006. See also Advisory Opinions No. 77-006, 86-007, and 86-008.

An agent for petitioning landowners and his attorney are employed to promote the views and interests of the landowners. See Dabkowski v. Baumann, 175 Ohio St. 89 (1963); Uerner v. Pickelheimer, 45 Ohio App. 343 (1933). A member of city council is charged with deciding, in an objective and impartial fashion, whether the interests of the city require that the application for annexation be accepted or rejected. A city council member who also served as the agent for petitioning landowners or as the agent's attorney would have an inherent conflict of interest such that his independent and objective judgment with regard to his official decisions and actions would be impaired. Therefore, Divisions (D) and (E) of Section 102.03 prohibit a city council member from accepting, soliciting, or using his official authority or influence to secure payments for serving as the agent or the agent's attorney, for landowners who have petitioned to have their property annexed to the city.

A member of city council is also subject to the prohibition of Division (C) of Section 102.04 of the Revised Code which provides:

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 city council member is prohibited, therefore, from receiving or agreeing to receive directly or indirectly compensation for personally representing, or providing other services for, landowners on their application for annexation pending before city council. Division (D) of Section 102.04 provides an exception to the prohibition of Division (C), but is unavailable to elected officers, as well as to an official who wishes to receive compensation for rendering services on a matter which is pending before the agency with which he serves. Therefore, Division (D) would not permit a city council member to receive compensation for personally rendering services for landowners on an annexation petition pending before city council.

This advisory opinion is based on the facts presented, and is limited to questions arising under Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code, and does not purport to interpret other laws or rules.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that: (1) Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a member of city council from serving as the agent for landowners who have petitioned to have their property annexed to the city which he serves, and from serving as the agent's attorney; and (2) Division (C) of Section 102.04 of the Revised Code prohibits a member of city council from receiving directly or indirectly compensation for personally representing or providing any other service for landowners on their application for annexation pending before city council.



Merom Drachman, Chairman
Ohio Ethics Commission