



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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Advisory Opinion Number 88-006
September 1, 1988

Syllabus by the Commission:

- (1) A city officer or employee is prohibited by Division (A)(4) of Section 2921.42 of the Revised Code from purchasing real property from the city under a land reutilization program, where he would be required by the city to construct an improvement upon the property or otherwise use such property for a specific purpose, unless all of the criteria for the exemption of Division (C) of Section 2921.42 of the Revised Code are met;
- (2) Division (A)(1) of Section 2921.42 of the Revised Code prohibits a city officer or employee from voting, discussing, deliberating, or otherwise using his official authority or influence, formally or informally, to secure real property from the city under a land reutilization program;
- (3) Division (A)(3) of Section 2921.42 of the Revised Code prohibits a city officer or employee whose approval is necessary to the sale of real property by the city under a land reutilization program, or who serves as a member of a legislative body, board or commission which must approve the sale, from purchasing such property where there is no competitive bidding process.

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You have asked whether city employees are prohibited by the Ohio Ethics Law and related statutes from participating in the city's Land Reutilization Program. You have stated that the city has approximately 1800 vacant lots which have been acquired through real estate tax foreclosure proceedings, and which are available for sale to the public at fair reuse value pursuant to the requirements of state law. Under the program, an interested buyer must submit a proposal to the city specifying the purpose for which the property would be used. An appraisal is then made of the property, and the city and applicant agree upon a purchase price within a specified range; such price is dependent upon the proposed use and any previous efforts the applicant had made to maintain the property. Each transaction is reviewed by the Neighborhood Advisory Council, which is composed of city officials and employees and area residents, and must be approved by the city planning commission, city council, and the board of control. Upon approval, the buyer executes a purchase agreement with the city agreeing to pay the purchase price, to use the property in accordance with his proposal, and to observe all requirements imposed by the city as to the payment of real estate taxes, and maintenance and use of the property. You question whether city employees are prohibited from purchasing property from the city under this Program.

Division (A)(4) of Section 2921.42 of the Revised Code provides:

(A) No public official shall knowingly do any of the following: . . .

(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.

The term "public official" is defined for purposes of R.C. 2921.42 to include any elected or appointed officer, or employee of a political subdivision. See R.C. 2921.01(A). Therefore, city officers and employees are subject to the prohibitions of R.C. 2921.42. See Ohio Ethics Commission Advisory Opinions No. 80-007, 84-011, and 85-002.

The term "public contract" is defined for purposes of R.C. 2921.42 in Division (E) of that section, to include the purchase or acquisition, or a contract for the purchase or acquisition of property or services by or for the use of a political subdivision. In Advisory Opinion No. 83-006, the Ethics Commission held that the sale of property by a city is not a "public contract" as defined in Division (E) of Section 2921.42 since it is not the purchase or acquisition of property or services by the city. But cf. Advisory Opinion No. 88-003 (holding that the purchase or acquisition of real property by a political subdivision is a "public contract" under R.C. 2921.42(E)). The specific question addressed in Advisory Opinion No. 83-006 was whether city employees were prohibited from purchasing unclaimed items at a public police auction. While purchasers of items at the auction paid money to the city as consideration for the items, there is no indication that they were further required to render any property or service in exchange for the items.

In this instance, however, the city is selling property it owns to purchasers who agree to pay a purchase price, but who also agree to construct improvements upon the vacant lots, or to otherwise utilize them for a specific and useful purpose. The city is, therefore, acquiring community development and revitalization services through its sale of the vacant lots. See generally Advisory Opinions No. 83-005 and 84-011. Consequently, the sale of vacant lots by the city to purchasers under the Land Reutilization Program is a "public contract" since the city is acquiring services from the purchasers. R.C. 2921.42(A)(4) would prohibit all city officers and employees from purchasing property from the city under the Land Reutilization Program. See generally Advisory Opinion No. 87-002.

Division (C) of Section 2921.42 does, however, provide an exception to the prohibition of Division (A)(4), and reads as follows:

(C) This section does not apply to a public contract in which a public servant, member of his family, or one of his business associates has an interest, when all of the following apply:

(1) The subject of the public contract is necessary supplies or services for the political subdivision or governmental agency or instrumentality involved;

(2) The supplies or services are unobtainable elsewhere for the same or lower cost, or are being furnished to the political subdivision or governmental agency or instrumentality as part of a continuing course of dealing established prior to the public servant's becoming associated with the political subdivision or governmental agency or instrumentality involved;

(3) The treatment accorded the political subdivision or governmental agency or instrumentality is either preferential to or the same as that accorded other customers or clients in similar transactions;

(4) The entire transaction is conducted at arm's length, with full knowledge by the political subdivision or governmental agency or instrumentality involved, of the interest of the public servant, member of his family, or business associate, and the public servant takes no part in the deliberations or decision of the political subdivision or governmental agency or instrumentality with respect to the public contract.

Division (C)(2) requires that a public official show that the goods or services he is offering to sell are unavailable elsewhere for the same or lower cost. Under the Land Reutilization Program, the city sets the value of the property to be sold within a specified range, and the actual purchase price is based on several factors including the proposed use of the property and previous efforts of the applicant to maintain the lot. Therefore, it would be difficult for a city official or employee to be able to demonstrate by some objective criteria that his services are unavailable elsewhere for the same or lower cost, except where all interested and eligible applicants, who are not city officials or employees, have been considered, and where appropriate, authorized to purchase property, and property still remains for sale. See generally Advisory Opinion No. 84-011.

You have indicated that preference is given under the Program to adjacent land owners. If it can objectively be demonstrated that this criterion is a valid and proper consideration and reasonably furthers the Program's purposes and goals, then a city official or employee who is an adjacent landowner may properly purchase property before others who are not adjacent landowners are given an opportunity to purchase property. See generally Advisory Opinion No. 88-001. If adjacent landowners are not interested in purchasing a lot, preference is then given under the Program to proposals for new construction. Again, if it can objectively be shown that this criterion reasonably advances the goals of the Program, then a city official or employee who proposes to construct a new improvement upon the land may purchase the property before others who do not propose new construction are given an opportunity to purchase. If, however, a city official or employee does not fall within either preferred status, he may not participate in the Program until all other interested applicants have been considered, and where appropriate, served.

Assuming that the criteria for the exemption of Division (C) can be established, so that a city officer or employee may purchase property under the Land Reutilization Program, the city official or employee would, nevertheless, still be subject to Division (A)(1) of Section 2921.42, which prohibits a public official from authorizing or employing the authority or influence of his office to secure authorization of a public contract in which he has an interest. Therefore, a city

official or employee would be prohibited by R.C. 2921.42(A)(1) from voting, discussing, deliberating, or otherwise using his official authority or influence, formally or informally, to secure for himself property under the Program. See also R.C. 2921.42(C)(4) (set forth above).

City officers and employees who are required to authorize any sale of property under the Land Reutilization Program or who serve on a board or commission which is so required, are also subject to Division (A)(3) of Section 2921.42 of the Revised Code, which provides that no public official shall knowingly:

During his term of office or within one year thereafter, occupy any position of profit in the prosecution of a public contract authorized by him or by a legislative body, commission, or board of which he was a member at the time of authorization, and not let by competitive bidding or let by competitive bidding in which his is not the lowest bid.

A public contract will be deemed to have been "authorized" by a public official, legislative body, board or commission for purposes of R.C. 2921.42(A)(3), where the public contract could not have been awarded without the public officials or entity's approval. See Advisory Opinion No. 87-004. While the city does conduct a selection process for applicants interested in obtaining property under the Land Reutilization Program, the city does not conduct a competitive bidding process. R.C. 2921.42(A)(3) would, therefore, prohibit a city officer or employee whose approval is necessary to the sale of a lot, or who serves on a legislative body, board or commission which must approve the sale, from purchasing property under the Program. A member of a legislative body, board or commission is bound by this prohibition regardless of the fact that he abstains from deliberating, voting upon, or otherwise authorizing the purchase. See Advisory Opinion No. 87-008.

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.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that: (1) A city officer or employee is prohibited by Division (A)(4) of Section 2921.42 of the Revised Code from purchasing real property from the city under a land reutilization program, where he would be required by the city to construct an improvement upon the property or otherwise use such property for a specific purpose, unless all of the criteria for the exemption of Division (C) of Section 2921.42 of the Revised Code are met; (2) Division (A)(1) of Section 2921.42 of the Revised Code prohibits a city officer or employee from voting, discussing, deliberating, or otherwise using his official authority or influence, formally or informally, to secure real property from the city under a land reutilization program; (3) Division (A)(3) of Section 2921.42 of the Revised Code prohibits a city officer or employee whose approval is necessary to the sale of real property by the city under a land reutilization program, or who serves as a member of a legislative body, board or commission which must approve the sale, from purchasing such property where there is no competitive bidding process.


Paul F. Ward, Chairman
Ohio Ethics Commission