



**OHIO ETHICS COMMISSION**

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Advisory Opinion Number 90-008  
May 25, 1990

Syllabus by the Commission:

(1) Division (D) of Section 102.03 of the Revised Code prohibits a city council member who is employed by a private law firm from voting, discussing, or otherwise using the authority or influence of his official position, formally or informally, with regard to a matter pending before city council if an employee or partner of his law firm is representing a client on that specific matter pending before council.

(2) Division (D) of Section 102.03 of the Revised Code prohibits a city council member who is employed by a private law firm from voting, discussing, or otherwise using the authority or influence of his official position, formally or informally, with regard to a matter pending before city council on which an employee or partner of his law firm has provided consultation and advice to the party which is presenting the matter to council.

(3) Division (E) of Section 102.03 of the Revised Code prohibits a city council member who is employed by a law firm from receiving a distributive share of client fees earned by members of his law firm for representing a client on matters pending before city council or for providing consultation and advice to a party which is presenting a matter before council.

(4) Division (D) of Section 102.03 of the Revised Code does not generally prohibit a city council member from participating in a matter pending before city council which is brought by a party who is a client of the council member's law firm but is not represented by the law firm on the matter before council, unless the relationship between the council member and client is such that the council member's independence of judgment could be impaired.

(5) Division (D) of Section 102.03 of the Revised Code does not generally prohibit a city council member who is employed by a private law firm from participating in a matter pending before city council in which a client of the city council member's law firm has a contingent interest, unless the law firm's receipt of client fees is dependent upon councils determination of the matter, or unless the council member's independence of judgment could otherwise be impaired.

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You asked whether the Ohio Ethics Law would prohibit you, as a city councilman, from participating as a member of council on certain matters, since you are also an employee of a

private law practice. You have specifically asked if you may participate in a matter before council in which your law firm represents a party to the matter. Next, you have asked if you may participate in a matter brought before council by a party who has consulted with a member of your law firm, although the law firm does not actually represent the party. Third, you have asked if you may participate in a matter brought before council where a party to the matter is a client of your law firm, but the firm does not represent the client on the matter before council. Fourth, you asked if you are prohibited from participating in matters where your law firm represents a party to the transaction which lead to the matter, but does not represent the party which brought the matter before council. Finally, in situations where you must abstain from voting on a specific matter, you have asked if you must also abstain from voting to suspend the rules or on an emergency clause for the matter.

By way of history, you have stated in your letter that although you are employed by a private law firm, you resigned as a partner on December 1, 1989, the day you took office as a council member. You no longer receive partnership profits and you have no role in partnership decisions. However, you do receive a salary, and you have the opportunity to receive a bonus for each year you are "productive." Your productivity will be measured in terms of billable hours, clients relations, and contributions to firm management.

Your first question concerns whether you may participate in a matter before the city council where your firm represents a party to the matter before council. Divisions (D) and (E) of Section 102.03 of the Revised Code read:

(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 to include any person who is elected or appointed to an office of a city. See R.C. 102.01 (B) and (C). A member of a city council is a "public official or employee" for purposes of R.C. 102.03. See Advisory Opinions No. 76-005, 79-008, and 89-008. The term "anything of value" is defined for purposes of R.C. 102.03 to include money and every other thing of value. See R.C. 102.01 (G) and 1.03. Client fees generated by the practice of law fall within the meaning of "anything of value." See Advisory Opinions No. 86-004, 89-015, and 89-016.

You have explained that you are an employee of the firm and receive a salary, but that you are not entitled to a distributive share of the firm's profits. In Advisory Opinion No. 89-016, the Ethics Commission discussed the relationship between a public official who is an associate or employee of a law firm, and the law firm for which he works and found that:

[t]he relationship between [a public official] and his employing law firm and law partners or associates indicates that his objectivity or independence of judgment could be impaired in considering a matter in which his law firm and law partners or associates are interested, and that R.C. 102.03 (D) would prohibit [the public official] from participating in matters in which his law firm is involved even though he does not personally receive a share of the client fees.

See Advisory Opinions 86-004, 88-004, 88-005, and 89-015.

R.C. 102.03 (D) would, therefore, prohibit you from voting, taking part in discussions or deliberations, or otherwise participating, formally or informally, in the consideration of matters pending before the council if a member of your firm is representing a client on the specific matter before council, even though you do not personally receive a share of the client's fees. See Advisory Opinion No. 89-016.

You should note, in addition, that R.C. 102.04 (C) prohibits you, as a city councilman, from receiving compensation for representing an individual or rendering other services personally on any matter pending before any entity of the city. See R.C. 102.04(C) ("no person who is elected or appointed to an office of . . . a . . . municipal corporation . . . 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 . . . 11). See also Advisory Opinion No. 89-016. Further, R.C. 102.03(E) would prohibit a council member who is a partner or employee in a law firm from accepting a share of the client fees earned by members of his law firm for representing clients on matters before the city council. Id.

You have also asked whether you may participate in a matter pending before council where a member of your law firm has provided legal consultation and advice to the party bringing the matter before council, but the party is not being represented by your firm. You state that a member of your law firm provided specific advice to the legal counsel of a former city employee who had brought a lawsuit against the city which you serve. Even though your law firm is not directly representing the client, the consultation and advice of the member of your firm influenced the development of a settlement proposal before council.

The Ethics Commission has consistently held that Division (D) of Section 102.03 of the Revised Code prohibits a public official or employee from acting in any situation where the public official or employee would have an inherent conflict of interest such that his independence and objectivity of judgment could be impaired. See Advisory Opinions No. 84-009, 85-006, and 88-009. In previous advisory opinions, the Ethics Commission has held that R.C. 102.03(D) prohibits a public official from reviewing, in his official capacity, work that members of his law firm have prepared. See Advisory Opinion No. 89-016. See also Advisory Opinions No. 82-001, 83-001, and 84-004. If a public official were to review and act upon matters in which members of his law firm have earned client fees, then the official would be subject to an inherent conflict of interest which could impair his objectivity and independence of judgment in carrying out his official decisions and responsibilities with respect to that matter.

Accordingly, R.C. 102.03(D) prohibits you from taking any action, formally or informally, with regard to a matter in which a member of your law firm has provided legal services. Division (E) of Section 102.03 would prohibit you from receiving a distributive share of client fees earned by a member of your firm in a matter pending before council.

The next issue to be addressed is whether the Ohio Ethics Law prohibits you from participating in matters which arise before council where a party to the matter is a client of your firm, but your firm does not represent the party on the specific matter before council. Division (D) of R.C. 102.03 prohibits a public official or employee from 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. As discussed above, the statute would prohibit you from participating as a council member in any decision affecting your law firm's client if your law firm were representing the client on that matter. See Advisory Opinions No. 86-004 and 89-016. However, in this instance, your firm is not representing the client before council. The central issue is, therefore, whether the firm's relationship with a client, standing alone, is sufficient to trigger the prohibition of R.C. 102.03(D), so as to prohibit you from participating in matters affecting the interests of the client in instances where the firm is not involved.

The Ethics Commission has held that a public official is prohibited, by R.C. 102.03(D), from taking any action regarding a matter if his action will result in a definite and particular pecuniary benefit or detriment to the public official or to the public officials business associates. See Advisory Opinion No. 88-004. In order to determine if the Ethics Law would prohibit you from taking part in actions which would directly affect your law firm's client on matters in which the law firm is not involved, it must first be determined if the clients of your law firm would be considered your business associates. Id.

In addressing this issue, it is helpful to examine R.C. 2921.42 (A)(1), which prohibits a public official from authorizing or using the authority or influence of his office to secure authorization of a public contract in which any of his business associates has an interest. The Ethics Commission has held, for purposes of R.C. 2921.42(A)(1), that parties who act together to pursue a common business purpose, or who conduct a common business enterprise, are "business associates." See Advisory Opinion No. 86-002. In considering whether the contractor client of a city officials insurance agency was a "business associate" of the official, the Ethics Commission stated, in Advisory Opinion No. 86-002:

Under the facts presented, the contractor is a client or customer of the insurance agency. Thus, the transaction is one of the purchase and sale of insurance services, as opposed to a general business relationship or association to conduct a common business enterprise. While it may be argued that an insurance agency and its clients often have an established business relationship, it would be inaccurate to characterize that relationship as a business association, since they are not engaged in a common business enterprise. Therefore, Division (A)(1) of Section 2921.42 of the Revised Code would not prohibit a city council member who is an officer and major shareholder of an insurance agency from authorizing, voting, or otherwise using the authority or influence of his office to secure approval of a public contract with a firm that is a

client or customer of the agency. However, it would create the appearance or impropriety because of their business relationship. (Emphasis added.)

Applying this reasoning to the facts now presented, it appears that your firm's clients would not be considered your business associates for purposes of R.C. 102.03(D).

However, the conclusion that your law firm's clients are not considered to be your "business associates" does not end the inquiry as to whether you may participate in matters affecting the clients' interests. The standard used under R.C.102.03(D) to determine if a council member may properly participate in a matter involving another party is whether the relationship between the council member and the other party is such that the council member's objectivity or independence of judgment could be impaired with regard to matters that affect the interests of that party. See Advisory Opinion No. 88-004. Generally, the mere fact that a party is also a client of an officials law firm would not be sufficient to require the official to abstain from matters involving the client's interests. There may be some circumstances, however, where R.C. 102.03(D) would prohibit a public official from acting on matters involving a client. The facts and circumstances of each case must be examined to determine if the nature of the relationship between the public official and the client is such that his objectivity and independence of judgment could be impaired. See Advisory Opinion No. 88-004. For example, if the public official himself is currently representing a client on other matters, he would be prohibited, by R.C. 102.03(D), from acting in his official capacity on any matter which could benefit the client. In addition, you should note that any action you take with respect to your law firm's clients may create an appearance of impropriety because of the relationship between your law firm and its clients.

You next asked if you may participate in matters brought before council on which the firm represents a party to the transaction which lead to the matter, but does not represent the party who brought the matter before council. You give as an example an instance in which the firm's client is selling property to a third party. One of the conditions to the sale is that the land be rezoned. The third party has approached council to vote on the zoning change. Although the zoning request was brought by a third party, the firm's client is interested in the zoning matter and is represented by the council member's law firm on that zoning matter. See Advisory Opinions No. 86-004 and 89-016.

The Ethics Commission has held that Division (D) of R.C. 102.03 prohibits a city council member from acting on a matter upon which a benefit to the private, pecuniary interests of the official is contingent, or upon which a benefit to the interests of certain parties such as the officials spouse or business associates is contingent. See Advisory Opinions No. 76-005, 79-003, 79-008, and 88-005. A change in the zoning of a piece of property, when the change affects the value of the property or the landowner's ability to sell the property, is a thing of value to the landowner for purposes of R.C. 102.03. See Advisory Opinion No. 79-008. In the example you posed, the zoning change is a condition to the sale of property by the client. Clearly, the zoning change, whether it is granted or denied, will have a direct impact upon the interests of your law firm's client. However, as concluded above, a city council member is not Generally prohibited from participating in a matter solely on the basis that the matter may affect the interests of his law firm's client. Therefore, the prohibitions set forth in R.C. 102.03(D) would not prohibit you

from voting on a zoning or other matter upon which the pecuniary interests of your law firm's client are contingent. Once again, however, you should be aware that voting on this matter could present an appearance of impropriety.

As stated above, client fees to the law firm which employs you are within the definition of "anything of value," and are of such character as to manifest a substantial and improper influence upon you. See Advisory Opinion No. 89-016. Therefore, if client fees to your law firm are dependent upon the zoning change or other matter pending before council, you would be prohibited by R.C. 102.03(D) from participating in the vote which affects the interests of your law firm. For example, if your firm would represent its client on the sale of property which is dependent upon the zoning change, then you would be prohibited from participating as a council member on the question of the zoning change.

In your final question, you ask what kinds of actions you may take concerning matters on which you have a conflict of interest. If you are prohibited from participating in a specific matter by either R.C. 102.03(D) or R.C. 2921.42, you may not participate in that matter in any way. You would be prohibited from voting and deliberating, as well as participating in informal discussions and other communications, oral or written. Further, if the suspension of the rules or an emergency clause is relative to the matter on which you have a conflict of interest, you are prohibited from taking part in those actions.

As a final matter, you should take note of the provisions of Division (B) of R.C. 102.03, which reads:

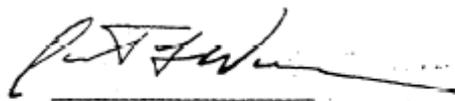
No present or former public official or employee shall disclose or use, without appropriate authorization, any information acquired by him in the course of his official duties which is confidential because of statutory provisions, or which has been clearly designated to him as confidential when such confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary to the proper conduct of government business.

Pursuant to this section, you are prohibited from disclosing confidential information which you acquired in your position as a city council member to your law firm or any other person, or from using such information, without appropriate authorization. See Advisory Opinion No. 89-006. This limitation is applicable during your public service, and after, and remains in effect as long as the information is confidential. Id.

As a final note, you should be aware that your question may also raise issues concerning the professional conduct of attorneys under the Code of Professional Responsibility. These issues are not within the jurisdiction of the Ethics Commission, but should be referred to the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court.

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) Division (D) of Section 102.03 of the Revised Code prohibits a city council member who is employed by a private law firm from voting, discussing, or otherwise using the authority or influence of his official position, formally or informally, with regard to a matter pending before city council if an employee or partner of his law firm is representing a client on that specific matter pending before council; (2) Division (D) of Section 102.03 of the Revised Code prohibits a city council member who is employed by a private law firm from voting, discussing, or otherwise using the authority or influence of his official position, formally or informally, with regard to a matter pending before city council on which an employee or partner of his law firm has provided consultation and advice to the party which is presenting the matter to council; (3) Division (E) of Section 102.03 of the Revised Code prohibits a city council member who is employed by a law firm from receiving a distributive share of client fees earned by members of his law firm for representing a client on matters pending before city council or for providing consultation and advice to a party which is presenting a matter before council; (4) Division (D) of Section 102.03 of the Revised Code does not Generally prohibit a city council member from participating in a matter pending before the city council which is brought by a party who is a client of the council member's law firm but is not represented by the law firm on the matter before council, unless the relationship between the council member and client is such that the council member's independence of judgment could be impaired; and (5) Division (D) of Section 102.03 of the Revised Code does not generally prohibit a city council member who is employed by a private law firm from participating in a matter pending before city council in which a client of the city council member's law firm has a contingent interest, unless the law firm's receipt of client fees is dependent upon councils determination of the matter, or unless the council member's independence of judgment could otherwise be impaired.



David L. Warren, Chairman  
Ohio Ethics Commission