



OHIO ETHICS COMMISSION

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

Advisory Opinion Number 90-013
October 11, 1990

Syllabus by the Commission:

- (1) The Ohio Ethics Law does not, per se, prohibit a person from serving as a member of a port authority on the basis that he is pursuing a lawsuit against the authority or is a defendant in a lawsuit brought by the authority;
- (2) Division (D) of Section 102.03 of the Revised Code prohibits a port authority member from voting, participating in discussions or deliberations of the port authority or otherwise using his official position, formally or informally, with regard to a lawsuit or the subject of a lawsuit which he is, or may be, pursuing against the authority, or which is, or may be, brought by the authority against him.

* * * * *

You have asked if the Ohio Ethics Law and related statutes prohibit an individual from serving as a member of a port authority if he has filed a lawsuit against the port authority or if he is a defendant in a lawsuit brought by the port authority.

By way of history, you have explained that, pursuant to city charter, the city established a port authority (authority) composed of five members appointed by the mayor, with the advice and consent of city council. The authority has jurisdiction over the navigable areas of the river at and near its junction with the lake. The city leases city-owned property to the authority in order to assist the authority in generating revenue through dockage rental, boat launch facilities, and other services. The city also leases to the authority the right to control navigable river frontage where any street meets the river and navigable river frontage in city parks. Part of this park property leased to the authority by the city is a strip of land which varies between three and eleven feet in width between a particular street and the river. The authority has offered river frontage leases to the residents of this street to enable the residents to have access to the river across the street from their homes.

You have further explained that one of the authority members lives on this street across from the strip of land. Although the city and the port authority claim ownership rights over the strip, the authority member is claiming that his property lines extend across the street to the river, and that he owns the part of the strip that falls within those lines. The authority member filed a lawsuit to quiet title to this strip of property in his name against the adjoining land owners and the city. The lawsuit against the city was dismissed. The authority has now instructed you, as the city law director, to file a lawsuit to quiet title against the authority member, as a land owner, and other land owners similarly situated.

You have asked if an individual is prohibited from serving as a member of the authority because he has filed a lawsuit against the authority or because he may be a defendant in a lawsuit brought by the authority. The Constitution of the State of Ohio provides: "All courts shall be open, and every person, for an injury done to him in his lands, goods, persons, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay." Ohio Const. art. I, Sec. 16. An individual cannot be denied access to the courts for redress of damages because of his status as a public employee. See generally *State v. Barry*, 123 Ohio St. 458, 463-64 (1931). Accordingly, the Ohio Ethics Law and related statutes do not prohibit the authority member from pursuing or defending a legal claim against the city or the authority.

However, the Ohio Ethics Law and related statutes do condition the activities of the authority member with regard to any lawsuit he may pursue. Division (D) of Section 102.03 of the Revised Code provides:

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.

The term "public official or employee" is defined, for purposes of R.C. 102.03(D), to include "any person who is elected or appointed to an office or is an employee or any public agency." See R.C. 102.01(B). A "public agency" is defined to include any board, commission, or authority of a city. See R.C. 102.01(C). A member of a city port authority is, therefore, a "public official or employee" for purposes of R.C. 102.03. See generally Ohio Ethics Commission Advisory Opinion No. 89-012.

The term "anything of value" has been defined, for purposes of R.C. 102.03(D), to include money, goods, an interest in property, and any other thing of value. See R.C. 1.03; R.C. 102.01(G). The potential recovery of a fee simple ownership of real property, as well as any enhancement in the value of such property, falls within the definition of "anything of value" for purposes of R.C. 102.03(D). See Advisory Opinion No. 88-004.

R.C. 102.03(D) prohibits a public official from using the authority or influence of his official position to secure anything of value, for himself or any other party, that is of a substantial and improper character. See Advisory Opinions No. 80-007, 85-006, 86-003, 86-007, 88-004, 89-006, and 90-012. The Ethics Commission has held that R.C. 102.03(D) prohibits a public official or employee from voting, discussing, participating in deliberations, or otherwise using the authority or influence of his office or employment, formally or informally, to secure anything of value where the thing of value could impair the official's or employee's objectivity and independence of judgment with respect to his official actions and decisions for the agency which he serves. See Advisory Opinions No. 79-002, 80-004, 84-009, 84-010, 87-006, 87-009, and 89-006.

In Advisory Opinion No. 88-004, the Ethics Commission was asked whether a city council member could participate in a matter which would render a particular benefit or

detriment to property in which he had an ownership interest. The Commission stated, in Advisory Opinion No. 88-004, that the standard to be used in judging if the council member should abstain is whether "the matter before council would provide such a definite and particular benefit for the council member that his private interest could impair his independence of judgment or unbiased discretion in making his official decisions." The Commission concluded in Advisory Opinion No. 88-004:

A council member should refrain from participating in any matter where an affirmative decision would decrease the value of his property, or have some other direct, detrimental effect on his private interests, as well as where an affirmative vote would benefit his property, since his independence of judgment could be impaired in either situation.

In the situation you have presented, the port authority and the authority member stand in adversarial positions. The authority member had filed a lawsuit against the city to quiet title to the part of the strip of land which lies between his lot lines as he extends them to the river. Although the authority member's lawsuit has been dismissed, the city or authority may file a lawsuit against the authority member to quiet title to the strip of land. If a lawsuit brought by the authority is decided in its favor, the authority member's financial interests would be detrimentally affected, in that he would then have no ownership rights or entitlements to the property, and he would have no access to the river frontage across the street from his property, unless he leased the frontage from the authority. If a lawsuit brought by the authority is decided in the authority member's favor, his financial interests will be benefited. He would be found to have an ownership interest in the property, and would have access to the river frontage across from his property. Furthermore, a court's decision quieting title to the property in the member's name could enhance the value of his property. Therefore, any action or decision of the authority with regard to the authority's lawsuit, or the property which is the subject of the lawsuit, could directly affect the authority member's private, financial interests. This benefit or detriment to the member's financial interests could impair his objectivity and independence of judgment with regard to his duties and decision-making as an authority member. Therefore, the authority member is prohibited, by Division (D) of R.C. 102.03, from voting, participating in discussions or deliberations of the authority, or otherwise using his official position, formally or informally, with regard to a potential or pending lawsuit or the property which is the subject of the lawsuit.

As a final matter, Division (B) of R.C. 102.03 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, the authority member is prohibited from using or disclosing confidential information which he acquired in his position as an authority member, without

appropriate authorization. See Advisory Opinion No. 89-006. This prohibition has no time limit, and is applicable during the authority member's public service, and after. Id.

The Ethics Commission, when rendering advisory opinions, interprets pertinent statutory provisions, and sets forth the criteria which must be observed to avoid a violation of the law. It cannot, however, determine whether those criteria have been met in a particular situation in the context of rendering an opinion. The opinion function of the Ethics Commission is not a fact-finding process. See Advisory Opinion No. 75-037. In addition, the Commission cannot render an opinion with regard to facts which have already transpired. However, the Commission can explain the application of the Ethics Law and related statutes to a set of circumstances.

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) The Ohio Ethics Law does not, per se, prohibit a person from serving as a member of a port authority on the basis that he is pursuing a lawsuit against the authority or is a defendant in a lawsuit brought by the authority; and (2) Division (D) of Section 102.03 of the Revised Code prohibits a port authority member from voting, participating in discussions or deliberations of the port authority or otherwise using his official position, formally or informally, with regard to a lawsuit or the subject of a lawsuit which he is, or may be, pursuing against the authority, or which is, or may be, brought by the authority against him.



David L. Warren, Chairman
Ohio Ethics Commission