



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

Advisory Opinion Number 92-006
March 6, 1992

Syllabus by the Commission:

- (1) Division (A) of Section 102.04 of the Revised Code prohibits a member of a county board of elections from receiving or agreeing to receive, directly or indirectly, compensation for personally rendering lobbying services on behalf of clients in any case, proceeding, application, or other matter which is before the General Assembly, or any other governmental entity of the State, excluding the courts, unless the requirements of Divisions (D) and (E) of Section 102.04 of the Revised Code are met;
- (2) Division (A) of Section 102.03 of the Revised Code prohibits a member of a county board of elections from representing a client before any public agency on any matter in which he personally participated during his public service;
- (3) Division (A)(4) of Section 2921.42 of the Revised Code prohibits a member of a county board of elections from having an interest in a public contract entered into by the Office of the Secretary of State or by any office, department, or agency of the county he serves, unless the exception of Division (C) of Section 2921.42 can be met;
- (4) Division (B) of Section 102.04 of the Revised Code prohibits a member of a county board of elections from selling, or agreeing to sell, any goods or services to the General Assembly or any other governmental entity of the State, excluding the courts, except through competitive bidding, unless the requirements of Divisions (D) and (E) of Section 102.04 of the Revised Code are met;
- (5) Division (A)(4) of Section 2921.42 of the Revised Code does not prohibit a member of a county board of elections from selling marketing and consulting services to clients to aid them in selling their goods and services to agencies or instrumentalities of the State or political subdivisions;
- (6) Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a member of a county board of elections who has a marketing and management consulting firm from using the authority or influence of his office to secure anything of value for himself, his firm, or his clients, and from accepting or soliciting anything of value that is of such character as to manifest a substantial and improper influence upon him with respect to his official duties.

* * * * *

In your letter to the Ethics Commission you state that you are president, principal, owner, and shareholder of a marketing and management consulting firm and serve as a member of a county board of elections. You ask whether the Ohio Ethics Law and related statutes prohibit you or your firm from selling lobbying services to clients. These services would include persuading state and local governmental agencies to purchase the clients' goods and services and influencing members of the state legislature to act upon legislation in a manner beneficial to the clients' interests. You also ask whether you or your firm may sell marketing information and consulting services to clients to aid them in marketing their goods or services to state and local governmental entities. You state that the lobbying, marketing, and consulting services would be rendered by yourself personally and/or by employees of your firm or independent contractors. Your firm's clients will pay retainers, hourly fees, sales commissions, and bonuses in exchange for your firm's services. You would receive a distribution of the firm's profits from transactions with clients. In addition, you state that it is possible that you or your firm may lobby state agencies and political subdivisions to purchase goods or services from a business of which you own half an interest. You further state that neither you nor your firm will lobby: (1) the Secretary of State's Office; (2) agencies of the county where you serve upon the board of elections; and (3) political subdivisions located within the county.

Your proposed actions create four situations which will be addressed. These situations are where you or your firm will: (1) lobby the General Assembly and state agencies on behalf of clients; (2) lobby political subdivisions on behalf of clients; (3) lobby state agencies and political subdivisions to purchase goods or services from a business in which you hold an ownership interest; and (4) sell marketing information and consulting services to clients.

The lobbying of the General Assembly and state agencies by you or your firm on behalf of clients will be addressed first.

Division (A) of R.C. 102.04 reads as follows:

Except as provided in division (D) of this section, no person elected or appointed to an office of or employed by the general assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, 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 that is before the general assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts.

R.C. 102.04 (A) prohibits a person who is elected or appointed to an office of, or employed by, any department or instrumentality of the state, from receiving, directly or indirectly, "compensation," except from the agency with which he serves, for personally rendering any service in any matter before the General Assembly or any other governmental entity of the state.

The threshold issue is whether you are appointed to an office of the state and thus subject to the prohibition imposed by R.C. 102.04 (A) by virtue of your position as a member of a county board of elections.

In Advisory Opinion No. 74-007, the Ethics Commission determined that members of a county board of elections are state officers and thus subject to R.C. 102.04 (A) since the board members are appointed by, and under the jurisdiction of, the Secretary of State pursuant to R.C. 3501.06. The Commission explained:

Even though members of county boards of elections may appear to be county officers by virtue of their title and the geographical extent of their authority (they operate only within their county), a review of statutory and case law draws one to the conclusion that they are in fact state officers and therefore would fall within the prohibitions set forth in Division (A) of Section 102.04 of the Revised Code.

Furthermore, in Advisory Opinion No. 75-001, the Ethics Commission determined that:

Members of the county boards of elections . . . serve as representative to the Secretary of State. . . . Thus, the county boards of elections are the organizational units of the office of the Secretary of State. (Emphasis in original.)

See also State ex rel. Milburn v. Pethtel, 153 Ohio St. 1 (1950) (members of county boards of elections are public officers who exercise the sovereign powers of the state); State ex rel. Columbus Blank Book Manufacturing Co. v. Ayres, 142 Ohio St. 216 (1943) (members of county boards of elections perform no county functions and are not county officers; they act under the direct control and are answerable only to the Secretary of State in his capacity as chief elections officer of the state); R.C. 3501.16 (the Secretary of State may summarily remove a member of a county board of elections for cause); and 1986 Op. Att'y Gen. No. 86-077 (members of a board of elections are not in the "county service" for purposes of R.C. 124.38, which grants sick leave benefits to employees who are in county service).

It must be noted that the Ethics Commission has held that a member of a county board of elections is "connected" with the county with which he serves for purposes of R.C. 2921.42 (A)(4) since the board exercises its duties on a county-wide basis and has budgetary and other statutory connections with the board of county commissioners. Ohio Ethics Commission Advisory Opinion No. 87-002. See also R.C. 3501.12 and 3501.17 (a member of a county board of elections is paid out of the appropriations made to the county board of elections by the board of county commissioners, and such compensation is paid out of the county treasury, as are all other board of elections expenses.) Cf. Advisory Opinion No. 74-007 (the fact that members of a county board of elections are compensated through the county auditor's office, as provided by R.C. 3501.12, does not outweigh the support that members of a county board of elections are state officers.) However, statutory and case law also clearly establish that a member of a county board of elections is a state officer. Therefore, as a member of a county board of elections, you are appointed to an office of the state and subject to the prohibition imposed by R.C. 102.04 (A). (See discussion below of R.C. 102.04 (C), which applies prohibition to county officers.)

The issue becomes whether R.C. 102.04 (A) prohibits you from receiving compensation from clients for lobbying services rendered by you or your firm on matters before the General Assembly and other governmental entities of the state.

The term "compensation" is defined in 102.01 (A) for purposes of R.C. 102.04 as "money, thing of value, or financial benefit." As a member of a county board of elections you are paid on a monthly basis for your services. See R.C. 3501.12. R.C. 102.04 (A) prohibits you from receiving "compensation," other than as provided by R.C. 3501.12, for any service rendered or to be rendered by you personally in any case, proceeding, application, or other matter which is before the General Assembly, or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts. The distribution of the firm's profits which you would receive as president, principal, owner, and shareholder of the firm from retainers, hourly fees, sales commissions, and bonuses paid to your firm by clients in exchange for lobbying, marketing, and consulting services is "compensation" for purposes of R.C. 102.04 (A). See Advisory Opinions No. 75-025, 76-009, and 77-001.

The phrase "rendering of services" in the context of R.C. 102.04 (A) was described by the Ethics Commission as "the performing of services such as advising, consulting, representing or the like which involves matters 'before' the General Assembly or an agency, or a department, division, institution, instrumentality, board, commission, or bureau." Advisory Opinion No. 75-006. The Commission has held that 'advising, consulting, or representing' include such activities on the part of a lobbyist as promoting, advocating, or opposing matters before the General Assembly. Advisory Opinion No. 76-009. The Commission has also explained that a matter is "before" a governmental agency "when it is being considered by, decided by, or in the presence of or under the official purview of" a governmental agency, including the General Assembly. Advisory Opinion No. 76-009. See Advisory Opinion No. 75-006. See also Advisory Opinion No. 75-025 (the prohibition of R.C. 102.04 (A) applies when the "matter" is before a state agency, not merely when an affected person is before the agency; R.C. 102.04 (A) prohibits an affected person from receiving compensation for services rendered by him personally in a matter which is before a state agency, even if he renders services within the confines of his private office.) Accordingly, the Commission determined in Advisory Opinion No. 76-009 that R.C. 102.04 (A) prohibits an appointed state official from receiving compensation for services which he would render personally as a lobbyist on a matter before the General Assembly. R.C. 102.04 (A) also prohibits an appointed state officer from receiving compensation for personally rendering services as a lobbyist on a matter before executive state agencies. See Advisory Opinions No. 75-006 and 76-009.

The lobbying services which you or your firm will provide for clients with regard to matters pending before the General Assembly and other state entities consist of "rendering services" on matters that are "before" the General Assembly and other state entities for purposes of the prohibition of 102.04 (A). Therefore, R.C. 102.04 (A) prohibits you from receiving "compensation" including retainers, hourly fees, commissions, bonuses, and other things of value, or financial benefits, directly or indirectly, for personally rendering lobbying services on behalf of clients on matters pending before the General Assembly or any other entity of the state.

The Ethics Commission has explained that the prohibition of R.C. 102.04 (A) applies only to services rendered "personally" by the state officer. See Advisory Opinions No. 74-009 and 75-025. Accordingly, the Commission has determined that R.C. 102.04 (A) prohibits a state officer or employee from receiving compensation from a client for rendering services before the General Assembly or other state entities himself; however, R.C. 102.04 does not prohibit a state officer from receiving compensation in the form of a distributive share of profits from a firm in which he holds an interest, provided that some other person personally renders the services. See Advisory Opinions No. 74-009, 75-025, 77-001, and 86-004. But see Advisory Opinion No. 75-025 (R.C. 102.04 (A) in some circumstances could prohibit an affected person from personally engaging in behind-the-scenes consultations with a business partner who would then render services personally on behalf of clients on matters before state agencies.) The receipt of a distributive share of profits may implicate other statutes under the Ethics Commission's jurisdiction. See R.C. 102.03 (D) and (E), discussed below. For example, the Ethics Commission has held that R.C. 102.03 (E) prohibits a public official or employee from receiving a distributive share of fees paid by clients for services rendered by his business partners on matters pending before the public body on which he serves. Advisory Opinion No. 89-016. See also Advisory Opinion No. 89-010 (explaining the interaction between the prohibitions imposed by R.C. 102.04 and 102.03 (D) and (E)). However, R.C. 102.04 (A) would not prohibit you from receiving a distributive share of client fees where you have not personally rendered the services.

Therefore, R.C. 102.04 (A) prohibits you from receiving "compensation" including retainers, hourly fees, commissions, bonuses, and other things of value, or financial benefits, directly or indirectly, for personally rendering lobbying services on behalf of clients on matters pending before the General Assembly or any other entity of the state.

However, Division (D) of Section 102.04 of the Revised Code provides an exception to the prohibition of R.C. 102.04 (A) for public employees and persons who are appointed to a non-elective office. In order to meet the exception provided by R.C. 102.04 (D) two conditions must be met: (1) the representation provided by the official or employee must be before a public agency other than his own; and (2) prior to rendering the personal services the official or employee must file a 102.04 (D) Statement which describes the personal services to be rendered and other information. The public official or employee must file the 102.04 (D) Statement with: (1) the Ohio Ethics Commission; (2) his own agency; and (3) the agency before which he will be rendering personal services. The public official or employee must declare on the 102.04 (D) Statement that he will disqualify himself for a period of two years from the date the statement is filed from participation as a public official or employee in any matter involving any public official or employee of the agency before which the matter is pending. Division (E) of Section 102.04 emphasizes that a public official or employee who files, or is required to file a 102.04 (D) Statement, must disqualify himself from any participation as a public official or employee in any matter involving any official or employee of the agency before which the matter on which he rendered personal services was pending.

In the instant situation, you have stated that you will not lobby, on behalf of clients, the Secretary of State's Office or the county board of elections upon which you serve. Since you will not lobby these public agencies, you are capable of meeting the exception to the prohibition of R.C. 102.04 (A) which is provided by R.C. 102.04 (D), since: (1) you are appointed to a non-

elective office; and (2) the matters for which you will render services on behalf of clients will be pending before agencies other than your own.

Therefore, you may receive, or agree to receive, compensation from clients of your firm for personally rendering lobbying services on matters which are before the General Assembly or agencies of the state other than the Secretary of State's Office, if you comply with the requirements of Divisions (D) and (E) of Section 102.04. For example, if you receive compensation for personally rendering lobbying services on behalf of a client on a matter before the General Assembly, then you must file 102.04 (D) Statements with the appropriate agencies prior to rendering the services, and disqualify yourself for a period of two years from the date you file your 102.04 (D) Statement, from any participation, as a member of the county board of elections, on any matter involving any public official or employee of the General Assembly. Under no circumstances may you represent clients before the Secretary of State's Office. See also R.C. 102.03 (D) and (E), described below.

R.C. 102.03 (A) also restricts your conduct in lobbying public agencies. R.C. 102.03 (A) prohibits you, during your service on the county board of elections and for one year after leaving the board, from representing a client before any public agency, on any matter in which you have personally participated as a board member. See Advisory Opinions No. 79-007 and 90-012. Furthermore, R.C. 102.03 (B) prohibits you from disclosing confidential information you acquired during the course of your official duties to your firm's clients, employees and independent contractors, and from using such confidential information, without appropriate authorization. See Advisory Opinion No. 88-009. The prohibition of R.C. 102.03 (B) has no time limitation and it is effective while you serve on the county board of elections and after you leave office. Id.

The second situation to be addressed is where your firm will lobby political subdivisions on behalf of clients.

In Advisory Opinion No. 74-009, the Ethics Commission explained that R.C. 102.04 is divided into sections: Division (A) is directed to curb abuse at the state level by imposing a prohibition upon state officers and employees; what is now Division (C) is directed towards abuse which may arise at the level of county, township, or municipal government, or within any other governmental entity below the state level. R.C. 102.04 (C), which is directed to levels of government other than the state level, 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.

R.C. 102.04 (C) imposes a restriction similar to R.C. 102.04 (A) against a 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, from receiving, directly or indirectly, "compensation" except from the agency with which he serves, for personally rendering any service in any matter before any agency, department, board, bureau, commission, or other instrumentality, excluding the courts, of the entity of which he is an officer or employee.

The issue thus arises whether a member of a county board of elections is a county officer for purposes of R.C. 102.04 (C), as well as being a state officer for purposes of R.C. 102.04 (A). As noted above, the Ethics Commission has held, for example, that the members of a county board of elections are "connected" with the county for purposes of R.C. 2921.42. See Advisory Opinion No. 87-002. However, you have stated that you and your firm will not lobby agencies of the county where you serve on the board of elections. Therefore, the issue whether you are a county officer subject to the prohibition imposed by R.C. 102.04 (C) with respect to lobbying county agencies need not be addressed under the facts and circumstances present in the instant situation.

R.C. 102.04 (C) does not prohibit an officer or employee of a political subdivision from receiving compensation for rendering services on matters pending before agencies of other political subdivisions. Therefore, you are not prohibited by R.C. 102.04 (C) from receiving compensation for lobbying political subdivisions other than the county with which you serve, regardless of whether you are a county officer. You are, however, bound by the prohibitions of R.C. 102.03 (A) and (B), as set forth above, in lobbying of any public agency of any political subdivision. See also R.C. 102.03 (D) and (E) (discussed below).

The third situation to be addressed is where you would lobby governmental entities of the State and political subdivisions to purchase goods or services from a business of which you own half. You have stated that the business will not sell goods or services to: (1) the Secretary of State's Office; (2) agencies of the county where you serve on the board of elections; and (3) agencies of political subdivisions located within the county.

In order to address this situation, it is necessary to distinguish between "lobbying" on behalf of a company and "having an interest in a public contract." If your marketing and management consulting firm lobbies State and local governmental agencies on behalf of another business of which you own half, then the restrictions of R.C. 102.04 (A) and (C) will apply and the requirements of R.C. 102.04 (D) and (E) must be met, as set forth above. You are also bound by the prohibitions of R.C. 102.03 (A) and (B), as discussed above, in lobbying any public agency. See also R.C. 102.03 (D) and (E) (discussed below).

However, the fact that you have an ownership interest in a business selling goods and services to governmental entities of the State and political subdivisions also implicates R.C. 2921.42 (A)(4), which reads as follows:

(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 in R.C. 2921.01 (A) for purposes of R.C. 2921.42 to include an officer or employee of the State or any political subdivision of the State. A member of a county board of elections is a public official and thus subject to the prohibitions of R.C. 2921.42. See Advisory Opinion No. 87-002.

The term "public contract" is defined for purposes of R.C. 2921.42 in Division (E) of that section to include "[t]he purchase or acquisition, or a contract for the purchase or acquisition of property or services by or for the use of the state or any or its political subdivisions, or any agency or instrumentality of either." In order to be prohibited under R.C. 2921.42, a public official's interest must be definite and direct, and may be pecuniary or fiduciary in nature. See Advisory Opinions No. 78-005 and 81-008. The Ethics Commission has held that an individual with an ownership interest in a business has a pecuniary interest in the contracts of the business for purposes of R.C. 2921.42 (A)(4). See Advisory Opinions No. 78-006, 80-007, 81-008, and 86-005. Therefore, you would have an "interest" in the purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of the State or any political subdivision from a business in which you have an ownership interest. See Advisory Opinions No. 81-008, 82-004, 83-010, and 84-001.

R.C. 2921.42 (A)(4) prohibits a public official from having an interest in a public contract which is entered into by or for the use of the political subdivision or governmental agency or instrumentality with which the public official is "connected." See Advisory Opinion No. 87-002. In Advisory Opinion No. 89-004, the Commission held:

It is apparent that the purpose of R.C. 2921.42 is best served if the statute is interpreted as prohibiting a public official from doing business with all political subdivisions, governmental agencies, and instrumentalities with which he is connected. (Emphasis added.)

It therefore is necessary to determine with which political subdivisions, governmental agencies, and instrumentalities you are "connected" as a member of a county board of elections for purposes of R.C. 2921.42 (A)(4).

The Ethics Commission has stated that, at the state level, a public official's specific department is the governmental agency with which he is connected for purposes of R.C. 2921.42 (A)(4). See Advisory Opinions No. 84-008 and 86-005. See also Advisory Opinion No. 89-012. As discussed above, members of a county board of elections are appointed by, and serve as representatives to, the Secretary of State, and the county boards are the organizational units of the Secretary of State's Office. You are, as a member of a county board of elections, clearly "connected" with the Office of the Secretary of State. Also, as discussed above, in Advisory Opinion No. 87-002, the Ethics Commission held that a member of a county board of elections is "connected" with the county which he serves for purposes of R.C. 2921.42 and is prohibited from selling property or services to any board, agency, or instrumentality of the county.

Therefore, a business in which you have an ownership interest is prohibited from selling goods or services, or contracting to sell property or services, to the Office of the Secretary of State and to any board, agency, instrumentality, or office of the county.

Division (C) of Section 2921.42 provides an exception to the prohibition of R.C. 2921.42 (A)(4). However, since you have stated that your business will not sell goods or services to the Secretary of State's Office or to agencies of the county where you serve on the board of elections, it is unnecessary to address the exception to the prohibition of R.C. 2921.42 (A)(4) provided by Division (C). See generally Advisory Opinion 90-003. (describing the four criteria of Division (C)).

You should also be aware of Division (A)(1) of Section 2921.42 which prohibits a public official from authorizing or using the authority or influence of his position to secure authorization of a public contract in which he or a business associate has an interest. Furthermore, Division (A)(3) prohibits a public official, during his term of office and for one year thereafter, from profiting from a public contract which was authorized by him, or by his board or commission, where the contract was not competitively bid, or where his was not the lowest and best bid.

In Advisory Opinion No. 87-002, the Ethics Commission did not address the issue whether a member of a county board of elections was also "connected" with political subdivisions located within the county for purposes of R.C. 2921.42 (A)(4). It is also unnecessary to address this issue in the instant situation, since you have stated that your business will not sell property or services to agencies of political subdivisions located within the county.

The sale of goods and services to state agencies other than the Secretary of State's Office by a business of which you own half also implicates R.C. 102.04 (B) which provides:

Except as provided in Division (D) of this section, no person elected or appointed to an office of or employed by the general assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts, shall sell or agree to sell, except through competitive bidding, any goods or services to the general assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts.

R.C. 102.04 (B) prohibits a person who is appointed to an office of the State, from selling or agreeing to sell, any goods or services, except through competitive bidding, to the General Assembly or any other governmental entity of the State. As explained above, as a member of a county board of elections, you are appointed to an office of the state. Therefore, you are subject to the prohibitions of R.C. 102.04 (B).

R.C. 102.04 (B) prohibits you from selling, or agreeing to sell, any goods or services, except through competitive bidding, to the General Assembly or any other governmental entity of the state. However, Division (D) of Section 102.04 of the Revised Code, as set forth above, provides an exception to the prohibition of R.C. 102.04 (B) for public employees and persons

who are appointed to a non-elective office and who sell goods or services to agencies other than their own.

In the instant situation, since you have stated that the business in which you own an interest will not sell goods or services to the Secretary of State's Office, you are capable of meeting the exception to the prohibition of R.C. 102.04 (B) which is provided by R.C. 102.04 (D), since: (1) you are appointed to a non-elective office; and, (2) the goods or services will be sold to state agencies other than your own. See generally Advisory Opinion No. 89-010. Therefore, you may avail yourself of the exception provided by R.C. 102.04 (D) and sell goods or services to state agencies other than the Secretary of State's Office without competitive bidding. However, in order to meet the exception provided by R.C. 102.04 (D), you must file 102.04 (D) Statements prior to the sale of the goods or services, in the same manner as described above, with the same two-year disqualification requirement, and must meet the requirement of Division (E), as described above. See Advisory Opinion No. 89-010. Even though you have stated that there are no plans for your business to sell goods or services to the Secretary of State's Office, it must be stressed that R.C. 102.04 (B) prohibits the business from selling goods or services to the Office of the Secretary of State except pursuant to competitive bidding. See also R.C. 2921.42 (C) (describing the criteria which must be met in order for a public official to do business with a governmental agency with which he is connected).

The prohibitions of R.C. 2921.42 would also apply where you would receive a sales commission or bonus from, or otherwise have a financial or fiduciary interest in, a public contract entered into between your client and a public agency. See Advisory Opinion No. 89-008.

The fourth situation to be addressed is where you or your consulting firm will provide clients with marketing information and consulting services in order to aid them in marketing goods or services to state and local governmental entities. These activities would not include lobbying public agencies on behalf of the clients. Therefore, the prohibitions of R.C. 102.04 (A) and (C), and R.C. 102.03 (A), as described above, do not apply. Also, you have stated that you do not have an ownership interest in the clients' businesses.

The issue becomes whether you would be deemed to have an interest in the "public contracts" of your firm's clients for purposes of R.C. 2921.42 (A)(4) if your firm were to sell marketing and consulting services to the clients to aid them in selling their goods and services to agencies or instrumentalities of the State or political subdivisions.

As discussed above, R.C. 2921.42 (A)(4) prohibits a member of a county board of elections from having an "interest" in the sale, or a contract for the sale, of property or services to any governmental agency with which he is "connected," including the Secretary of State's Office and the county with which he serves, unless the exemption of Division (C) of R.C. 2921.42 is met.

Under the facts presented, the public contracts will be between your firm's clients and agencies of the State or political subdivisions; neither you, nor your firm, will be a party to the proposed public contracts. In this respect, the instant situation differs from the facts which the

Ethics Commission addressed in Advisory Opinion No. 87-002 where a member of the county board of elections was president of a company which desired to sell goods to agencies of the county with which he was connected.

In the instant situation, your firm plans to sell marketing and consulting services to the clients to aid them in selling their goods and services to agencies of the State or political subdivisions. In Advisory Opinion No. 78-005, the Ethics Commission held that a partner in an accounting firm did not have a sufficiently definite and direct interest under R.C. 2921.42 in the issuance of industrial revenue bonds (a public contract), where his sole interest in the issuance of the bonds was a distributive share of the fees earned by his accounting firm for services rendered by the company seeking the bonds. The Commission noted that an accountant is not considered to have an "interest" in the business dealings of his clients merely because he receives a fee for professional services rendered for his client. As the Commission further explained in Advisory Opinion No. 86-002:

It would be unreasonable to hold that lawyers, accountants, insurance agents, and other professionals have an interest in the contracts of their business clients. In general such professionals are not deemed to be interested in the business dealings of a client, merely because they receive fees for professional services.

It is apparent that you and your marketing and management consulting firm would benefit only indirectly, if at all, from public contracts entered into by your clients where your firm sold marketing and consulting service to clients to aid them in securing the public contracts. Under the facts and circumstances of the instant situation, you would not have a definite and direct interest in the public contracts of your clients or your firm's clients for purposes of R.C. 2921.42 (A)(4). See Advisory Opinions No. 78-005, 85-002, and 86-002. Accordingly, R.C. 2921.42 (A)(4) does not prohibit you or your firm from selling marketing and consulting services to clients to aid them in selling their goods and services to agencies of the State or political subdivisions. But see Advisory Opinion No. 75-025 (a person covered by R.C. 102.04 (A) is "prohibited from receiving compensation for services rendered by him personally in a matter which is before a state agency, even if the service he rendered is performed within the confines of his . . . office").

With regard to all of your questions, it should be noted that R.C. 102.03 (D) and (E) also impose restrictions your conduct in the operation of your business. R.C. 102.03 (D) and (E) 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 an office of, or who is employed by, any department or board of the state or county. See R.C. 102.03 (B) and (C). As a member of a county board of elections you are a "public official or employee" for purposes of R.C. 102.03 (D) and (E). See Advisory Opinion No. 75-001. See also Advisory Opinion No 87-002.

The term "anything of value" is defined for purposes of R.C. 102.03 in R.C. 1.03 to include money and every other thing of value. See R.C. 102.01 (G). A definite, pecuniary benefit is considered to be a thing of value under R.C. 102.03. See Advisory Opinions No. 79-008, 88-004, 89-002, and 90-004. The fees received from clients and payment received pursuant to the sale of goods and services are within the definition of "anything of value" for purposes of R.C. 102.03 (D). See Advisory Opinions No. 89-016 and 90-003.

The Ethics Commission has held that R.C. 102.03 (D) and (E) prohibit a public official or employee from accepting, soliciting, or using his position to secure, anything of value that would directly benefit his personal or private pecuniary interests, where the thing of value could impair his objectivity and independence of judgment with regard to his official decisions and responsibilities. See Advisory Opinions No. 77-006, 85-006, 87-006, 88-002, 89-006, 89-010, and 90-002. The Ethics Commission has also held that R.C. 102.03 (D) and (E) prohibit a public official or employee from accepting, soliciting, or using the authority or influence of his office or employment 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 agency with which he serves. See Advisory Opinions No. 79-002, 79-006, 84-009, 84-010, 86-011, 87-006, 87-009, 88-002, and 89-010.

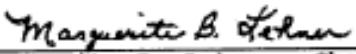
As stated above, you propose to lobby before, and do business with, public agencies other than the Secretary of State's Office, agencies of the county where you serve on the board of elections, and political subdivisions located within the county. The Ethics Commission has stated that a public official who operates a private business is not prohibited from doing business with other public agencies provided there is no conflict of interest and so long as the other provisions of the Ethics Law, such as R.C. 102.04, are met. See Advisory Opinions No. 77-006 and 89-010. However, a public official is prohibited from doing business with, or lobbying a public agency, where such activity could impair his independence of judgment and objectivity as an official. See, e.g., Advisory Opinion No. 77-006 (a state employee is prohibited by R.C. 102.03 (D) from using his position to secure employment, as an employee or independent contractor, with another public agency that is subject to his review); 89-004 (a public official is prohibited by R.C. 102.03 (D) from using his authority or influence to secure contracts for his private business from a public official over which he exercised authority); 89-010 (a state employee is prohibited by R.C. 102.03 (D) from selling services to a state institution which he regulates in his official capacity regardless of whether he has complied with R.C. 102.04); 89-016 (a public official is prohibited by R.C. 102.03 (D) and (E) from participating in a matter where a member of his firm is representing a client before the official's commission on that matter, and from receiving a distributive share of fees paid by the client for services rendered on that matter, regardless of whether the official has complied with R.C. 102.04). See also Advisory Opinions No. 82-002 and 84-008.

R.C. 102.03 (D) and (E) prohibit you from performing your official duties, or using your official authority or influence, in any manner, to secure an economic advantage for you, your business, or your clients. See Advisory Opinions No. 84-012, 84-013, 85-014, and 90-003. In conducting any private business activity, you are prohibited from: (1) using your official position, or your authority or influence with other officials or employees of the Secretary of State's Office and the county board of elections, to secure any benefit for your firm or clients, or favorable decisions in matters affecting your business interests or the interests of your clients; (2) participating in any matter before the Secretary of State's Office or the county board of elections that involves your business interests or your client's interests, or recommending, as a member of the county board of elections, that your private business be patronized; (3) using public time, facilities, or resources to operate a private business; (4) using the title of your position in soliciting business or in advertising, marketing, or operating a private business; (5) receiving outside compensation for services or projects which you have recommended in your official capacity; or (6) refraining from performing your official duties, or otherwise performing your official duties, in order to secure patronage for a private business; (7) accepting as a client any party who has an interest in any matter in which you are participating as a member of the county board of elections; and (8) accepting, soliciting, or using your official position to secure client fees from parties who are doing business or seeking to do business with, regulated by, or interested in matters before the Secretary of State's Office or the county board of elections. See Advisory Opinions No. 84-012, 84-013, 85-013, 85-014, 89-004, 89-006, and 90-002. Furthermore, R.C. 102.03 (D) and (E) prohibit you from receiving compensation from your business or business clients for rendering services which are your duty to perform or provide as a member of a county board of elections. This conduct is also prohibited by R.C. 2921.42 (A)(3), which prohibits a public servant from accepting any compensation, other than provided by law to perform his official duties. See Advisory Opinion No. 89-012.

This advisory opinion is based on the facts presented. It 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 (A) of Section 102.04 of the Revised Code prohibits a member of a county board of elections from receiving or agreeing to receive, directly or indirectly, compensation for personally rendering lobbying services on behalf of clients in any case, proceeding, application, or other matter which is before the General Assembly, or any other governmental entity of the State, excluding the courts, unless the requirements of Divisions (D) and (E) of Section 102.04 of the Revised Code are met; (2) Division (A) of Section 102.03 of the Revised Code prohibits a member of a county board of elections from representing a client before any public agency on any matter in which he personally participated during his public service; (3) Division (A)(4) of Section 2921.42 of the Revised Code prohibits a member of a county board of elections from having an interest in a public contract entered into by the Office of the Secretary of State or by any office, department, or agency of the county he serves, unless the exception of Division (C) of Section 2921.42 can be met; (4) Division (B) of Section 102.04 of the Revised Code prohibits a member of a county board of elections from selling, or agreeing to sell, any goods or services to the General Assembly or any other governmental entity of the State, excluding the courts, except through competitive bidding, unless the requirements of Divisions (D) and (E) of Section 102.04

of the Revised Code are met; (5) Division (A)(4) of Section 2921.42 of the Revised Code does not prohibit a member of a county board of elections from selling marketing and consulting services to clients to aid them in selling their goods and services to agencies or instrumentalities of the State or political subdivisions; and (6) Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a member of a county board of elections who has a marketing and management consulting firm from using the authority or influence of his office to secure anything of value for himself, his firm, or his clients, and from accepting or soliciting anything of value that is of such character as to manifest a substantial and improper influence upon him with respect to his official duties.


Marguerite B. Lehner, Chair
Ohio Ethics Commission