



OHIO ETHICS COMMISSION

150 EAST BROAD STREET
COLUMBUS 43215
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Advisory Opinion
No. 79-005
September 7, 1979

Syllabus by the Commission:

- 1) Division (A)(1) of Section 2921.42 of the Revised Code prohibits a member of a village council from knowingly authorizing, voting, or otherwise using the authority or influence of his office to secure approval of a roof repair contract between the village and a corporation in which he, a member of his family, or any of his business associates has an interest.
- 2) Division (A)(4) of Section 2921.42 of the Revised Code prohibits a member of a village council from knowingly having an interest in a roof repair contract between the village and a corporation of which he is a part owner.

In your request for an Ohio Ethics Commission Advisory Opinion, you asked whether the Ohio Ethics Law and related statutes would prohibit a member of a village council, who is an employee of a firm which seeks to contract with the village to repair the roof on a village building, from voting on the contract.

You stated, by way of history, that the village council has accepted three sealed bids, as required by law, on a contract to repair the roof of the village municipal building. The lowest bid was submitted by a corporation which employs the mayor and two members of the village council. None of the three is an officer or director of the corporation, but one of the council members owns one-third of the shares of the corporation. There are six members of the village council, and four votes are necessary to adopt the ordinance required for the contracts. In addition, it should be noted that the mayor is not authorized to vote on the ordinance.

Section 2921.42 of the Revised Code provides, in pertinent part:

- (A) No public official shall knowingly do any of the following:
 - (1) Authorize, or employ the authority or influence of his office to secure authorization of any public contract in which he, a member of his

family, or any of his business associates has an interest;

. . . .

- (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.

A member of a village council is a "public official," as that term is defined in Division (A) of Section 2921.01 and used in Section 2921.42 of the Revised Code. The term "public contract" is defined in Division (E) of Section 2921.42 to include "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 of its political subdivisions," which would include a contract for roof repairs on a village building.

Thus, under the facts you presented, Division (A)(1) of Section 2921.42 of the Revised Code would prohibit a member of a village council from knowingly authorizing, voting, or otherwise using the authority or influence of his office to secure approval of a public contract in which he, a member of his family, or any of his business associates has an interest. This prohibition would apply to both council members, since they would be authorizing or voting on a contract in which they or their business associates have an interest, and would apply to the mayor if he used the authority or influence of his office to secure approval of a contract in which his business associates have an interest. (See: Ohio Ethics Commission Advisory Opinion No. 78-006)

Division (A)(4) of Section 2921.42 of the Revised Code would prohibit a member of a village council from knowingly having an interest in the profits or benefits of a roof repair contract between the village and the firm by which he is employed. However, prior Ohio Ethics Commission opinions and court decisions indicate that an employee of a corporation is not considered to have an interest in the contracts of that corporation, for the purposes of Section 2921.42 of the Revised Code. [See: Ohio Ethics Commission Advisory Opinion Nos. 78-006 and 79-004; Boardman Local School District v. Ferguson, Case No. 74 C.A. 32 (1974)] Thus, Division (A)(4) of Section 2921.42 of the Revised Code does not apply to the mayor or the village council member who is employed by the firm but is not a stockholder. On the other hand, this prohibition would apply to the village council member who holds a one-third ownership interest in the roofing firm, since he has a definite, direct, pecuniary interest in the profits of the contract, unless he qualifies for the exemption of Division (C) of Section 2921.42. (See: Ohio Ethics Commission Advisory Opinion No. 78-005)

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Division (C) of Section 2921.42 of the Revised Code provides that the prohibitions of Division (A) of that Section do not apply to a public contract in which a public official has an interest, when all of the following apply: 1) the subject of the contract is necessary supplies or services; 2) the services are unobtainable elsewhere for the same or lower cost, or are furnished as part of a continuing course of dealing established prior to the public official's association with the governmental entity; 3) the treatment accorded the governmental entity is either preferential or the same as that accorded to other customers or clients in similar transactions; and 4) the entire transaction is conducted at arm's length, with full knowledge by the governmental entity of the interest of the public official, provided that the public official takes no part in the deliberations or decisions with respect to the contract. These are factual determinations, and whether a particular transaction meets the criteria of Division (C) of Section 2921.42 of the Revised Code depends upon the facts and circumstances of the individual case.

In the instant case: 1) the subject of the contract, roof repairs, is a service necessary to the village; 2) the fact that the bid by the roofing firm employing the mayor and two village council members is the lowest bid would appear to indicate that the services are unobtainable elsewhere for the same or lower cost; and 3) it appears that the treatment accorded the village would be the same as that accorded to other customers or clients of the roofing firm in similar transactions. Thus, if the entire transaction is conducted at arm's length, with full knowledge by the village and village council of the interest of the public officials in question, and the village council members take no part in the deliberations or decisions with respect to the contract, the exemption of Division (C) of Section 2921.42 of the Revised Code would be satisfied.

Therefore, we conclude that both council members and the mayor would be prohibited from authorizing, voting, or otherwise using the authority or influence of their offices to secure approval of a roof repair contract between the village and the corporation by which they are employed. However, the village council would not be prohibited from voting to approve the contract, if the officials in question withdraw from discussions and abstain from voting as required by both Divisions (A) (1) and (C) (4) of Section 2921.42, discussed above.

The conclusions of this advisory opinion are based on an examination of the facts you presented. The Ohio Ethics Commission cautions that its advisory opinions may be relied upon only with respect to questions arising under Chapter 102. and Section 2921.42 of the Revised Code, and do not address possible violations of other laws or rules.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that: 1) Division (A)(1) of Section 2921.42 of the

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Revised Code prohibits a member of a village council from knowingly authorizing, voting, or otherwise using the authority or influence of his office to secure approval of a roof repair contract between the village and a corporation in which he, a member of his family, or any of his business associates has an interest; and 2) Division (A) (4) of Section 2921.42 of the Revised Code prohibits a member of a village council from knowingly having an interest in a roof repair contract between the village and a corporation of which he is a part owner.

Mary K. Lazarus

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