



OHIO ETHICS COMMISSION

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Advisory Opinion
Number 89-012
October 18, 1989

Syllabus by the Commission:

- (1) A city law director is required by Section 3313.35 of the Revised Code to provide legal services to a city school district as part of his official duties, and is accordingly prohibited by Section 2921.43(A) of the Revised Code from accepting or soliciting additional compensation from the school district for legal services provided;
- (2) A city law director is not required by any provision of law to provide legal services to a port authority created by the city with which he serves, and therefore, he is not prohibited by Section 2921.43(A) of the Revised Code from accepting or soliciting compensation from the port authority for legal services provided. Division (E) of Section 102.03 of the Revised Code and Section 2921.42 (A)(4) of the Revised Code, however, prohibit a city law director from accepting or soliciting compensation for providing legal services to a port authority created by the city with which he serves.

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You asked whether the Ohio Ethics Law and related statutes would prohibit the law director of a statutory city from accepting compensation from the city school district or local port authority for representing these agencies in his capacity as law director.

You first ask whether a city law director may receive compensation from a city school district for providing legal services. Your attention is directed to Division (A) of Section 2921.43 of the Revised Code, which reads as follows:

- (A) No public servant shall knowingly solicit or accept and no person shall knowingly promise or give to a public servant either of the following:
 - (1) Any compensation, other than as allowed by divisions (G), (H), and (I) of section 102.03 of the Revised Code or other provisions of law, to perform his official duties, to perform any other act or service in the public servant's public capacity, for the general performance of the duties of the public servant's public office or public employment, or as a supplement to the public servant's public compensation;

- (2) Additional or greater fees or costs than are allowed by law to perform his official duties.

A "public servant" is defined, for purposes of this section, to include an elected or appointed officer of a political subdivision of the state. See R.C. 2921.01(A) and (B). A city law director is, therefore, a public servant for purposes of Division (A) of Section 2921.43. See R.C. 733.49. Hence, a city law director is prohibited from soliciting or accepting any compensation or additional or greater compensation for performing his official duties other than the compensation he is entitled by law to receive as law director. In the situation at hand, the city law director seeks additional compensation for representing the city school board. R.C. 3313.35 reads in pertinent part: "In city school districts, the city director of law shall be the legal adviser and attorney for the board thereof No compensation in addition to such officer's regular salary shall be allowed for such services." A city law director is required, pursuant to this section, to represent a city school board as part of his official duties as city law director and is specifically precluded from receiving additional compensation for providing such representation. See State ex rel. Grandview Heights School District Board of Education v. Morton, 44 Ohio St. 2d 151 (1975) (upholding the constitutionality of R.C. 3313.35, and interpreting the statute as obligating the city solicitor to provide free legal services to the board of education). Hence, the law director is prohibited by Division (A) of Section 2921.43 from soliciting or accepting additional compensation from the school district for representing the city school district.

Your next question is whether the city law director is prohibited from receiving compensation from a local port authority for providing legal services. It must first be determined whether the law director is required by law to provide legal services to the port authority in his official capacity. If such representation is considered to be part of the law director's official duties, then R.C. 2921.43 would prohibit him from receiving additional compensation from the port authority for providing the representation.

R.C. 733.51 states that the city law director "shall serve the several directors and officers provided in Title VII of the Revised Code as legal counsel and attorney." R.C. 733.54 further provides that an officer of a city, the legislative authority of a city, and each board provided for in Title VII of the Revised Code may seek opinions from the city law director. See also R.C. 733.53 (the law director, when so required by the legislative authority of the city, shall prosecute or defend on behalf of the city, all complaints, suits, and controversies).

You have indicated that, in this instance, the port authority and its board of directors are governed by R.C. 4582.01-.20, and are not provided for in Title VII. As described more fully below, a port authority and the municipality creating it are connected or related to each other in several respects. Nonetheless, a port authority is deemed to be a body corporate and politic and is governed by its own board of directors, as provided in R.C. Chapter 4582. See R.C. 4582.02 and 4582.03. A port authority has the authority to levy taxes and issue bonds and has the power of eminent domain, see R.C. 4582.06 and 4582.14. In addition, port authorities have been expressly recognized as independent political subdivisions in this state. See R.C. 2744.01(F) (a port authority is a political subdivision for purposes of Title 27). See also 1960 Ohio Op. Att'y Gen. No. 111 (a port authority is a political subdivision for purposes of R.C. 5739.02).

Therefore, it is apparent that a port authority created and governed pursuant to R.C. 4582.02-.20 is not a city body and its officers and employees are not city officers and employees. Therefore, the city law director is not required by the pertinent provisions of R.C. Chapter 733 to act as legal counsel or represent the port authority.

As illustrated by R.C. 3313.35, discussed above, statutory provisions outside of R.C. Chapter 733 may impose additional duties on the law director. However, there is no statute in R.C. 4582.01-.20 or elsewhere that expressly imposes a duty on the law director to act as counsel for a port authority. Division (A) of R.C. 4582.04 empowers a port authority to employ and fix the duties and compensation of such employees and professional help as required, and it is therefore assumed that a port authority has the ability to hire legal counsel. See generally Ohio Op. Att'y Gen. No. 79-039. R.C. 2921.43 would not, therefore, prohibit the law director from receiving compensation from the port authority for providing legal services.

Division (E) of Section 102.03, however, does apply in this situation. This provision reads: "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." A "public official or employee," as defined for purposes of R.C. 102.03, in Divisions (B) and (C) of Section 102.01, includes any person who is elected or appointed to an office of any city. A city law director is a public official within the purview of R.C. 102.03. See R.C. 733.49. Therefore, a city law director is prohibited by this section from soliciting or accepting anything of value which could have an improper influence upon him with respect to his official duties. For purposes of R.C. 102.03, "anything of value" includes money, any promise of future employment, and every other thing of value. See R.C. 1.03 and R.C. 102.01(G). Compensation for representation of the port authority falls within this definition of anything of value. See Ohio Ethics Commission Advisory Opinions No. 79-001 and 87-009. The remaining question is whether this compensation could have a substantial and improper influence upon the law director.

Generally, the Ethics Commission has held that a public official is prohibited from holding outside employment if such employment "could impair his independence of judgment with regard to his official decisions and responsibilities." Advisory Opinion No. 87-006. See also Advisory Opinion No. 88-002. Further, a public official cannot receive "consulting fees . . . commissions or other payments or fees from a party that is interested in matters before, regulated by, or doing or seeking to do business with the agency with which the official . . . serves." Advisory Opinion No. 86-008. See Advisory Opinions No. 84-010, 84-012, 84-014, and 85-014. The powers and duties of the port authority pose a particularly compelling concern in this situation. You stated that the port authority was created by the city in 1964. Accordingly, the powers and duties of the port authority are set forth in Revised Code Sections 4582.01 through 4582.20. See R.C. 4582.02. As discussed more fully above, the port authority is a separate political entity. See R.C. 4582.02. However, the port authority is closely linked to the city. The city may be partially responsible for the expenditures of the port authority. See R.C. 4582.023. In addition, the port authority may transfer its year-end surplus funds proportionally to the city and other entities within its jurisdiction. See R.C. 4582.13. In order for other political subdivisions to join the port authority, the municipal corporation which formed the authority must agree to the terms and conditions of joinder. See R.C. 4582.024. Property may be exchanged between the port authority and the municipal corporation on mutually agreeable terms and without competitive bidding. See R.C. 4582.121. The port authority may also contract with other political entities, including the municipal

corporation for which the law director works. See R.C. 4582.17. The municipality may dissolve the port authority at will, or with the agreement of other political subdivisions joined in the port authority. See R.C. 4582.023. If the port authority is dissolved, the property that composed it will be transferred to the forming subdivision and to joined subdivisions, if any, pursuant to agreement. Id. See generally Ohio Op. Att'y Gen. No. 86-029.

The existing and potential links between the city and the port authority are very clear. An attorney representing either entity would be expected to advise the entity with reference to business dealings with the other. Because of the frequent and varied contacts between the two entities, the likelihood of conflict is high. Division (E) of Section 102.03, would, therefore, prohibit the city law director from receiving compensation for representing the port authority. See generally Ohio Op. Att'y Gen. No. 79-019.

Notice should also be taken of Division (A)(4) of Revised Code Section 2921.42, which reads: "(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," for purposes of Section 2921.42, is defined in Section 2921.01 to include any elected or appointed official of a political subdivision of the state. A municipal law director would, therefore, be a public official subject to the prohibition in R.C. 2921.42. See Advisory Opinion No. 85-011. The term "public contract" is defined for purposes of Section 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 the state or any of its political subdivisions, or any agency or instrumentality of either." A port authority is a political subdivision of the state. See R.C. 4582.02 and discussion supra. Therefore, the purchase of legal services by the port authority is a "public contract" within the meaning of R.C. 2921.42. See Advisory Opinions No. 84-002 and 86-004.

In this instance, the law director wishes to contract with the port authority for the provision of legal services to the port authority. Division (A)(4) of Section 2921.42 prohibits a public official from having an interest in a public contract "entered into by or for the use of the political subdivision or governmental agency or instrumentality with which he is connected." (Emphasis added.) The issue, therefore, is whether the city law director is "connected" with the port authority.

The fact that the city law director is connected with the city does not mean that he cannot also be connected with other political subdivisions. As stated in Advisory Opinion No. 89-004:

[T]he purpose of R.C. 2921.42 is to prevent public officials from personally benefiting from the contracts of a public agency where such personal benefit is to the detriment of the public interest, and that the potential for a public official's private interest to conflict with the public interest is greatest where the public official is doing business with an agency with regard to which he is authorized to exercise authority, discretion, or other official responsibilities. 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.)

Therefore, the city law director is prohibited from having an interest in any public contract entered into by any political subdivision, governmental agency or instrumentality with which he is connected.

The word "connected," as used in R.C. 2921.42, is not defined within the statute. However, the Ethics Commission noted, in Advisory Opinion No. 87-002, "common usage indicates that to be 'connected with' something is to be related to, or associated with, that entity." The municipal corporation created the port authority involved here. See R.C. 4582.02. The jurisdictional boundaries of the port authority are coextensive with the territorial boundaries of the municipal corporation. See R.C. 4582.05. The members of the port authority board of directors are appointed by the mayor of the city. See R.C. 4582.03. The city and the port authority have many other potential ties, as explained more fully above. As a result, the city law director is related to or associated with the port authority. Therefore, the law director is "connected with" the port authority and is prohibited by R.C. 2921.42(A)(4) from having an interest in a public contract entered into by the port authority. See Advisory Opinion No. 89-004. The city law director is prohibited by R.C. 2921.42(A)(4) from entering into an agreement to represent the port authority.

This advisory opinion is based on the facts presented, and is rendered only with regard 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 law director is required by Section 3313.35 of the Revised Code to provide legal services to a city school district as part of his official duties, and is accordingly prohibited by Section 2921.43(A) of the Revised Code from accepting or soliciting additional compensation from the school district for legal services provided; (2) A city law director is not required by any provision of law to provide legal services to a port authority created by the city with which he serves, and therefore, he is not prohibited by Section 2921.43(A) of the Revised Code from accepting or soliciting compensation from the port authority for legal services provided. Division (E) of Section 102.03 of the Revised Code and Section 2921.42(A)(4) of the Revised Code, however, prohibit a city law director from accepting or soliciting compensation for providing legal services to a port authority created by the city with which he serves.



Richard D. Jackson, Chairman
Ohio Ethics Commission