



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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Advisory Opinion
Number 89-016
December 14, 1989

Syllabus by the Commission:

- (1) Division (D) of Section 102.03 of the Revised Code prohibits a member of a public body who is a partner or associate in a law firm from voting, discussing, participating in deliberations, or otherwise using his official position, formally, or informally, with regard to matters pending before his public body on which a member of his law firm is representing a client;
- (2) Division (E) of Section 102.03 of the Revised Code prohibits a member of a public body who is a partner in a law firm from receiving a distributive share of fees paid by clients for legal services rendered by members of his law firm on matters pending before the public body;
- (3) Division (C) of Section 102.04 of the Revised Code prohibits a member of a city commission from representing clients or rendering any other personal service in a case, proceeding, application, or other matter that is pending before the city commission.

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You have asked whether the Ohio Ethics Law and related statutes prohibit a law firm from representing clients before the city planning commission in light of the fact that a partner in the law firm also serves as a member of the planning commission. You have indicated that the planning commission will soon be considering a proposal for a new development and that one of the developers is a client of the law firm. The law firm wishes to prepare various documents which the planning commission is required to review as part of its determination whether to approve the development plan.

Divisions (D) and (E) of Section 102.03 of the Revised Code 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 to include any person who is elected or appointed to an office or is an employee of any commission of a city. See R.C. 102.01(B) and (C). Therefore, a member of a city planning commission is a "public official or employee" for purposes of R.C. 102.03. See R.C. 713.01; Advisory Opinion No. 85-006. 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).

In Advisory Opinion No. 86-004, the Ethics Commission addressed the issue whether the Ethics Law would prohibit members of a law firm from representing private clients on matters before a regional authority where a member of the authority was a member of the law firm. Although such representation was held not to be prohibited, the Commission found that fees or profits generated from a private law practice fall within the definition of "anything of value," and that such fees or profits would be of such character as to manifest a substantial and improper influence upon the authority member if he were to participate in a matter on which a party is represented by a member of his private law firm. The Commission held in Advisory Opinion No. 86-004 that R.C. 102.03(D) prohibits a member of a public body who is a partner in a law firm from participating in discussions, voting, or otherwise using his official position concerning a matter before his public body on which a party is represented by a member of his firm. Similarly, the Commission has held that a public official is prohibited by R.C. 102.03(D) from reviewing work prepared by members of his law firm for the firm's clients, since the clients' fees could impair his independence of judgment. See Advisory Opinions No. 82-001, 83-001, and 84-004.

R.C. 102.03(D) would, therefore, prohibit the member of the city planning commission from voting, taking part, formally or informally, in discussions or deliberations, or otherwise participating in consideration of matters pending before the planning commission on which a member of his law firm is representing a client.

It is assumed that the member of the planning commission is generally entitled, as a partner in the law firm, to a share of the client fees received by the firm for work performed by other members of his law firm, and this issue is addressed in greater detail below. It should be noted that, even if he does not accept his share of the fees, or is an associate or employee of the law firm such that he would not be entitled to a distributive share of fees, he would be prohibited by R.C. 102.03(D) from participating in consideration of matters on which his law firm is representing a client. In Advisory Opinion No. 88-004, the Commission held that a public official is prohibited from participating in a matter in which any of his business associates has an interest, where the public official's independence of judgment could be impaired. In Advisory Opinion No. 88-005, it was further held that a public official is prohibited from participating in matters affecting the interests of his private employer. The relationship between the planning commission member 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. See Advisory Opinion No. 89-015. Therefore, R.C. 102.03(D) would prohibit the planning commission member from participating in matters in which his law firm is involved even though he does not personally receive a share of the client fees.

The next issue to be addressed is whether the member of the planning commission is prohibited from receiving a distributive share of profits on legal services rendered by members of his law firm on matters pending before the planning commission. R.C.

102.03(E) prohibits a public official or employee from accepting or soliciting anything of value, including clients' fees, if the thing of value is of such character as to manifest a substantial and improper influence upon him with respect to his duties.

This issue has been addressed in the context of another provision of the Ethics Law, R.C. 102.04(C), which reads as follows:

- (C) Except as provided in division (D) of this section, no person 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.

In Advisory Opinion No. 86-004, it was held that a member of a regional authority who is a partner in a private law firm is prohibited from receiving compensation from a private client for personal services rendered on a matter before the regional authority. The opinion went on to conclude that R.C. 102.04 does not, however, prohibit other members of the public official's firm from representing clients before his public agency. See Advisory Opinions No. 74-009 and 82-001. Furthermore, the Commission has held that R.C. 102.04(C) does not prohibit the public official from receiving a share of the partnership profits from fees for services rendered by another member of the firm in matters before his agency so long as he does not render the personal services and does not review the firm's work. See Advisory Opinions No. 74-009, 82-001, 84-004, and 86-004. This issue has not been addressed, however, since the enactment of Division (E) of Section 102.03 in Am. Sub. H.B. 300 (116th Gen. A.) in September, 1986.

Division (E) of Section 102.03 prohibits a public official from accepting or soliciting anything of value from a party that is interested in matters before, regulated by, or doing business or seeking to do business with, the agency with which he serves. See, e.g., Advisory Opinions No. 79-002, 79-006, 80-004, and 86-011. In this instance, the share of partnership profits would come from fees paid by clients whose development is under consideration by the planning commission and who are, therefore, interested in matters pending before the planning commission. The public official serves as a member of the planning commission, and the fees which he would receive would be paid for legal services rendered in the specific matter that is pending before the planning commission. R.C. 102.03(E) would, therefore, prohibit the commission member from accepting his share of the fees paid by clients for representation by members of his law firm before the planning commission.

As a final point with regard to the planning commission member, R.C. 102.04(C), as set forth above, would prohibit the commission member from receiving compensation from his law firm or private clients for personally rendering any service in a case, proceeding, application, or other matter pending before any agency, department, board, or commission of the city, including of course, the planning commission. Division (D) of Section 102.04 provides an exception to the prohibition of Division (C), in cases where the matter is pending before an agency other than the planning commission. In order to

meet this exception, the statement described in Division (D) must be filed in accordance with the requirements of that Division. Furthermore, Divisions (D) and (E) of Section 102.04 would require the planning commission member to disqualify himself for two years from participating as a commission member in any matter involving any official or employee of the city agency before which the matter was pending in which he rendered his personal services. See generally Advisory Opinion No. 89-010. Under no circumstances, however, may he represent clients before the planning commission.

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 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 Ethics Commission, and you are so advised, that: (1) Division (D) of Section 102.03 of the Revised Code prohibits a member of a public body who is a partner or associate in a law firm from voting, discussing, participating in deliberations, or otherwise using his official position, formally, or informally, with regard to matters pending before his public body on which a member of his law firm is representing a client; (2) Division (E) of Section 102.03 of the Revised Code prohibits a member of a public body who is a partner in a law firm from receiving a distributive share of fees paid by clients for legal services rendered by members of his law firm on matters pending before the public body; and (3) Division (C) of Section 102.04 of the Revised Code prohibits a member of a city commission from representing clients or rendering any other personal service in a case, proceeding, application, or other matter that is pending before the city commission.



Richard D. Jackson, Chairman
Ohio Ethics Commission