



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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(614) 466-7090

April 7, 1988

Informal Opinion 1988-INF-0407-2

James A. Hall
Peoples Bank

Dear Mr. Hall:

You have asked whether the Ohio Ethics Law and related statutes prohibit you from serving as, or being a candidate for, county commissioner in light of the fact that you are an assistant vice president of a bank that is a county depository.

Division (A)(4) of Section 2921.42 of the Revised Code provides:

(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.

A "public official" is defined for purposes of R.C. 2921.42 to include any elected or appointed officer of a political subdivision of the state. See R.C. 2921.01(A). A county commissioner is an elected officer of the county, see R.C. 305.01, and is, therefore, a "public official" who is subject to the prohibitions of R.C. 2921.42.

A "public contract" is defined for purposes of R.C. 2921.42 in Division (E) of that Section to include the purchase or acquisition, or a contract for the purchase or acquisition of goods or services by or for the use of a political subdivision. The deposit of county funds in a bank is a "public contract" for purposes of R.C. 2921.42. See Ohio Ethics Commission Advisory Opinion No. 85-007. An "interest" which is prohibited under R.C. 2921.42 must be definite and direct, and may be either pecuniary or fiduciary in nature. See Advisory Opinion No. 81-008. An officer or board member of a bank is considered to have an interest in the contracts of that bank. See Advisory Opinions No. 83-003 and 85-007. Further, an employee will be considered to have an interest in a contract between his employer and the governmental agency with which he serves, where: (1) the employee takes part in the contract negotiations; (2) the employee is involved in the execution or administration of the contract, or serves in a management position, with the responsibility to oversee the execution or administration of the contract; (3) the employing agency receives most or all of its funding from the contract, such that the establishment or operation of the agency is dependent upon the receipt of the contract; (4) the creation or continuation of the employee's position is dependent upon the receipt of the contract; or (5) the employee's compensation is based upon the contract. See Advisory Opinions No. 78-006, 82-003, 84-009, and 85-008. Therefore,

absent other statutory provisions, a county commissioner would have a prohibited interest in a public contract if he served as a board member, officer, or in some instances an employee, of a bank that is a depository of county funds.

However, R.C. Chapter 135. of the Revised Code, the Uniform Depository Act, provides an exemption to the prohibition of R.C. 2921.42 for bank officers, directors, and employees. R.C. 135.38 reads as follows:

An officer, director, stockholder, employee, or owner of any interest in a public depository receiving public deposits pursuant to sections 135.31 to 135.40 of the Revised Code shall not be deemed to be interested, either directly or indirectly, as a result of such relationship, in the deposit of such public moneys for the purpose of any law of this state prohibiting an officer of any county from being interested in any contract of the county.

Therefore, a county commissioner is not prohibited from serving as an officer or employee of a bank that is a depository of county funds. See Advisory Opinion No. 85-007.

R.C. 135.38 does not, however, provide an exemption from the Ohio Ethics Law, Chapter 102. of the Revised Code. See Advisory Opinion No. 85-007. Divisions (D) and (E) of Section 102.03 of the Revised Code provide:

- (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.

R.C. 102.03(D) and (E) prohibit a public official or employee, including a county commissioner, see R.C. 102.01(B) and (C), from soliciting or using his official authority or influence to secure anything of value for himself or for anyone else if the thing of value is of such a character as to manifest a substantial and improper influence upon him with respect to his duties.

The term "anything of value" is defined for purposes of R.C. 102.03 to include money and every other thing of value. See R.C. 1.03 and R.C. 102.01(G). The deposit of county funds in a bank is, therefore, a thing of value, and would be of such a character as to manifest a substantial and improper influence upon a county commissioner if the deposit were in a bank that employed the county commissioner as an officer or employee. See generally Advisory Opinions No. 80-003 and 85-007. Therefore, a county commissioner may not solicit, or use his official authority or influence, formally or informally, to secure the deposit of county funds in a bank which he serves as an officer or employee. The board of county commissioners possesses various functions with regard to the investment of county funds. See e.g., R.C. 135.33, R.C. 135.34, R.C. 135.341. A county commissioner who is employed as an officer or employee of a bank must refrain from voting, deliberating, discussing, or otherwise participating in any matter which

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would benefit his bank. In addition, he should refrain from participating in issues concerning the bank's competitors if his bank were to benefit from a particular decision. See Advisory Opinion No. 86-007.

The prohibitions of R.C. 2921.42 and R.C. 102.03, discussed above, apply only to public officials and employees. They have no application to candidates for elective office.

This informal advisory opinion was approved by the Ethics Commission at its meeting on April 7, 1988. It 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. If you have any questions, please contact me.

Sincerely,



Melissa A. Warheit
Executive Director

MW/pg