



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

January 20, 1989 Informal Opinion 1989-INF-0120-1

The Honorable Stanley J. Trupo
Mayor of Berea

Dear Mayor Trupo:

You have asked whether the Ohio Ethics Law and related statutes prohibit you and three other members of the planning commission of the City of Berea from voting or otherwise participating in matters affecting a piece of property which belongs to the Berea St. Mary's Catholic Church in light of the fact that you and the three other members of the city planning commission are members of this church.

You have stated, by way of history, that you are the Mayor of the City of Berea and that under the city charter the mayor chairs the city planning commission. You state that the city planning commission reviews and approves applications for site development, building permits and occupancy permits for structures constructed within the city. You state that a developer has acquired an option to purchase land which is located adjacent to the Berea St. Mary's Catholic Church (hereinafter Church), its rectory, and the church hall, and which is owned by the the Diocese to which the Church belongs. The developer plans to build residential dwellings upon this land. However, the planning commission must approve the development before it may proceed, and the sale of the Church land is dependent upon the planning commission's approval of the development. The Diocese has indicated that even though it owns the property to be sold, the proceeds of the sale would accrue to the Church. You have also stated that you and the other three planning commission members do not have any personal monetary or fiduciary interest in the project; and that neither you nor your family members, nor any of the other commissioners nor their family members are employees or officers of the Church or the Diocese to which it belongs. You further state that neither you nor the commission members live in the immediate neighborhood of the land in question.

Division (D) of Section 102.03 of the Revised Code provides:

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.

A "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 any board, commission, or authority of a city. See R.C. 102.01(B) and (C). Therefore, a mayor of a city and members of a city planning commission are subject to the prohibitions of R.C. 102.03. See Ohio Ethics Commission 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, any interest in realty, and every other thing of value. See R.C. 102.01(G). A definite, pecuniary benefit to a person or an organization is considered to be a thing of value under R.C. 102.03(D). See Advisory Opinions No. 79-008, 85-006, 85-011, and 86-007. More specifically, the Commission has held that an opportunity or ability to sell property at a profit or for a commission, an increase or enhancement in the value of property, or other benefit to property is a thing of value. See Advisory Opinions No. 79-003, 79-008, and 80-007. See also Advisory Opinion No. 85-006. The issue thus becomes whether the Diocese's ability to sell property, from which the Church would financially benefit, is of such a character as to manifest a substantial and improper influence upon a planning commission member with respect to his duties, where he is a member of the Church.

Prior to the enactment of Am. Sub. H.B. 300, 116th Gen. A. (eff. Sept. 17, 1986), R.C. 102.03(D) prohibited a public official or employee from using his authority or influence to secure anything of value for himself if the thing of value were of such character as to manifest a substantial and improper influence upon him with respect to his duties. Am. Sub. H.B. 300 amended R.C. 102.03(D) to delete the requirement that the thing of value be for the public official or employee himself, thus broadening the scope of the prohibition of R.C. 102.03(D). See Advisory Opinion No. 87-004. However, R.C. 102.03(D) still requires that the thing of value, whether it is secured for the official or for someone else, be of such a character as to manifest a substantial and improper influence upon him with respect to his duties.

A determination as to whether a public official is prohibited from participating in a matter will depend on the relationship between the official and the party whose interests would be affected in that matter. See Advisory Opinion No. 88-004. The Ethics Commission has held that the standard in judging such participation is whether the relationship between the public official and the party is such that the public official's objectivity or independence of judgment could be impaired with regard to the matter affecting the party's interests. Id.

In this instance, you and three other planning commission members are members of the Church, the financial interests of which are dependent upon the planning commission's approval of the development. It is apparent that you and the other three Church members would have an inherent conflict of interest in making an official determination affecting the Church's interests, such that your objectivity or independence of judgment could be impaired.

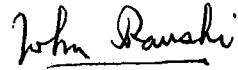
Therefore, you and the three other planning commission members who are members of the Church are prohibited by R.C. 102.03(D) from voting, deliberating, or otherwise participating, formally or informally, with respect to the development involving the sale of the Church's property.

Furthermore, your participation as a public official in matters affecting the interests of your Church would create the appearance of impropriety, thus undermining public trust and confidence in the integrity and impartiality of effective and objective local government. All public officials must accept necessary restrictions to avoid any possible interference with the responsibilities of office or the appearance of impropriety. See Advisory Opinion No. 85-002.

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This informal opinion is based on the facts presented, and was approved by the Ohio Ethics Commission at its meeting on January 20, 1989. The opinion 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. Should you require further assistance, do not hesitate to contact me.

Very truly yours,

A handwritten signature in cursive script that reads "John Rawski". The signature is written in dark ink and is positioned above a horizontal line.

John Rawski
Staff Attorney

JR/pg