



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

February 23, 1989 Informal Opinion 1989-INF-0223-1

James M. Long
Baker & Hostetler

Dear Mr. Long:

You have asked whether the Ohio Ethics Law and related statutes prohibit the chairman of a village planning commission from participating in the consideration of a proposed development in light of the fact that the law firm in which he is a partner represents one of the developers in connection with the development.

You have stated that Mr. J. Richard Hamilton is a partner in the law firm of Baker & Hostetler, and also serves as chairman of the Village of Bratenahl planning commission. Newport North Shore Development Limited Partnership (hereinafter Newport) is developing property in Bratenahl for a planned residential development (PRD). You have stated that Mr. Hamilton has had no association in a legal capacity with Newport or its individual partnerships, nor will he have any such association in the future. However, Mr. Albert Adams, another partner in the law firm of Baker & Hostetler, is representing Newport and its limited partner, KB Holdings. Baker & Hostetler will represent Newport generally in connection with the development of a portion of the PRD. Such representation will involve arrangements for the financing of the project and the drafting of various legal documents, such as sales contracts for the residences and docks, condominium documents, and a contract for the operation of a private club. Although these documents are not specifically prepared for presentation to the planning commission, they may be included with the preliminary and final plans of the PRD submitted to the commission, and reviewed by the commission as part of the PRD process. Baker & Hostetler will not represent Newport or its individual partners before the Village or in any negotiations regarding project documents that are subject to approval by the Village.

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 village. See R.C. 102.01(B) and (C). Therefore, a member of a village planning commission is a "public

official or employee" for purposes 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, an interest in realty, and every other thing of value. See R.C. 102.01(G).

In Advisory Opinion No. 86-004, the 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 private 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.

Applying R.C. 102.03(D) and the reasoning of the above-cited opinions to the instant situation, it must be concluded that the chairman of the village planning commission is prohibited from voting, taking part formally or informally, in discussions or deliberations, or otherwise participating in consideration of the planned residential development in light of the fact that a member of his law firm represents the partnership developing the property and has prepared documents pursuant to that representation which will be submitted to the planning commission for its review as part of the preliminary and final plans to be approved by the planning commission.

In applying the above-cited opinions to the instant situation, it is assumed that the chairman may receive, as a partner in the law firm, a share of the client fees received from Newport and KB Holdings for the work performed by the law firm. This issue is addressed in greater detail below. It should be noted, however, that even if Mr. Hamilton does not accept his share of the fees, he would be prohibited by R.C. 102.03(D) from participating in consideration of the development. 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 chairman of the planning commission and his employing law firm and law partner indicates that his objectivity or independence of judgment could be impaired in considering a matter in which his firm and law partner are interested. Therefore, R.C. 102.03(D) would prohibit the chairman of the planning commission from participating in the Newport development even if he did not personally receive a share of the client fees.

You have indicated that the chairman of the planning commission would not be acting as a lawyer for the planning commission in reviewing the documents prepared by his law partner and that he would not be passing upon the legal sufficiency of the

documents. He would, however, be reviewing the documents in his capacity as a member of the village planning commission, and as a commission member would be charged with reviewing the documents as part of the preliminary and final plans submitted to the commission. Various information, including the documents prepared by the law firm, must be included in the plans submitted to the commission for the planned residential development, see §§ 1164.04, 1164.10 of Village Code, and the commission must evaluate those plans and make a finding whether the plans are in accordance with the objectives and purposes of the Code for planned residential development and with all applicable regulations, standards, and criteria. See §§ 1164.06, 1164.11 of Village Code. The commission may require that the plans be modified and that changes be made so as to best serve the aesthetic, economic, and social interests of the village. The members of the planning commission are, therefore, charged with reviewing the documents submitted as part of the preliminary and final plans, in accordance with the standards set forth in the Code and for the purpose of making the required determinations. The fact that the members are not also required to pass upon the legal sufficiency of the documents does not alter the fact that the commission members are required to review the documents for other purposes or under different standards, and that R.C. 102.03(D) prohibits a commission member from participating in that review where the documents were prepared by a member of his law firm.

You have also asked whether the chairman of the planning commission may participate in discussions and vote on the preliminary and final plans if he abstains from the commission's review of the documents prepared by his law firm. As noted above, various documents and other information are submitted to the commission as part of the preliminary and final plans, and the commission must then decide whether to approve the preliminary plan and the final plan under the standards set forth in the Code. Each document is not separately considered and voted upon or approved. Rather, the submitted information is considered together and the plans are approved or disapproved as a whole. It would, therefore, be impossible for the documents prepared by the law firm to be considered separate and apart from the rest of the information and for the chairman to abstain from consideration of certain documents while discussing and voting upon the plans as a whole.

You have also asked whether Division (E) of Section 102.03 would prohibit Mr. Hamilton, the chairman of the planning commission, from receiving a distributive share of partnership profits on legal services rendered by Mr. Adams to Newport, or its limited partner KB Holdings. 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.

The issue you have raised has been addressed in the context of another provision of the Ethics Law, R.C. 102.04(C). This statute prohibits a public official from receiving compensation other than from the agency with which he serves, for personal services rendered in a case, proceeding, application or other matter before any agency of the same entity of government. In Advisory Opinion No. 86-004, for example, 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. 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

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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) 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 a matter pending before the planning commission. Mr. Hamilton serves as the chairman, and a member of the planning commission, and the fees which he would receive are paid for legal services rendered in the specific matter that is pending before the planning commission. R.C. 102.03(E) would, therefore, prohibit Mr. Hamilton from accepting his share of the fees paid by Newport or KB Holdings.

This informal advisory opinion was approved by the Ohio Ethics Commission at its meeting on February 23, 1989. The opinion was based upon the facts presented and 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. If you have any questions, please contact me.

Sincerely,



Melissa A. Warheit
Executive Director

MW/pg