



OHIO ETHICS COMMISSION
THE ATLAS BUILDING
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April 6, 1989

Informal Opinion 1989-INF-0406-2

The Honorable Gabriel L. Mellini
Richmond Heights City Council Member

Dear Mr. Mellini:

You have asked whether the Ohio Ethics Law and related statutes prohibit a city law director from employing, as an assistant law director and city prosecutor, an associate in the private law firm with which he is associated.

Division (A)(1) of Section 2921.42 of the Revised Code provides:

(A) No public official shall knowingly do any of the following:

- (1) Authorize, or employ the authority or influence of his office to secure authorization of any public contract in which he, a member of his family, or any of his business associates has an interest.

R.C. 2921.01(A) defines "public official" for purposes of R.C. 2921.42 to include any elected or appointed officer of any political subdivision of the state. A city law director is, therefore, a "public official" for purposes of R.C. 2921.42, and subject to the prohibitions of that section. See Ohio Ethics Commission Advisory Opinion No. 85-011.

Division (E) of Section 2921.42 defines a "public contract" for purposes 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" any political subdivision. An employment relationship between a political subdivision and an employee is a "public contract" under R.C. 2921.42, since the political subdivision is purchasing or acquiring the services of the employee. See Advisory Opinions No. 85-003 and 85-015. See also Advisory Opinions No. 78-001 and 83-002 (concluding that a contract to provide legal services to a municipality is a "public contract" under R.C. 2921.42). The employment of an assistant law director and city prosecutor by the city would constitute a "public contract" for purposes of R.C. 2921.42. Therefore, R.C. 2921.42(A)(1) would prohibit the city law director from authorizing, or otherwise using the authority or influence of his office to secure approval of, the employment of any of his business associates as an assistant law director or prosecutor for the city.

The question to be determined, therefore, is whether the partners and associates in the law firm with which the law director is associated are his "business associates." In Advisory Opinion No. 85-004, the Ethics Commission indicates that business associates are persons who are joined together in a relationship for business purposes, and that the term would include partners and fellow workers. In Advisory Opinion No. 86-002, the Commission stated that business associates act together to pursue a common business purpose or enterprise. The opinion noted that an employer is the business associate of an employee, that a firm is a business associate of an agent or representative, and that law

partners are business associates. Advisory Opinion No. 83-002 held that persons who are affiliated in a legal association and share expenses are business associates, and in Advisory Opinion No. 83-008, the Commission held that an attorney affiliated with a public official in a legal professional corporation is the official's business associate.

The partners and associates in a law firm are joined together in a common business purpose or enterprise. It is apparent from the foregoing that an associate in a law firm is the "business associate" of the firm and its partners, who act as his employers, as well as the "business associate" of the firm's other associates, his fellow employees. Therefore the city law director is prohibited from authorizing, or otherwise using his official authority or influence to secure approval of, the employment of the partners or associates in the private law firm with which he is associated, as assistant law director or prosecutor for the city.

This restriction is also imposed by Division (D) of Section 102.03 of the Revised Code, which prohibits a public official or employee, which includes a city law director, see R.C. 102.01(B) and (C), from using or authorizing "the use of the authority or influence of his office or employment to secure 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) would prohibit a law director from using his official position, authority, or influence to secure a position of employment for a person if the possibility of such employment were of such character as to manifest a substantial and improper influence upon him with respect to his official duties. R.C. 102.03(D) would, therefore, prohibit him from authorizing, or otherwise using his official authority or influence, formally or informally, to secure a position of employment with the city for a partner or associate in the law firm by which he is employed.

It should be noted that Division (A)(4) of Section 2921.42 prohibits a public official from having an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision with which he is connected. The city law director is, therefore, prohibited by R.C. 2921.42 from receiving a share of the compensation earned by the associate in his law firm in her capacity as assistant law director or city prosecutor regardless of the financial agreement established by the law firm. See Advisory Opinion No. 83-002. Division (E) of Section 102.03, which prohibits a public official or employee from accepting anything of value that is of such character as to manifest a substantial and improper influence upon him with respect to his official duties, would also prohibit the law director from accepting a share of the compensation paid by the city to the associate in his law firm.

This informal staff opinion was approved by the Ohio Ethics Commission at its meeting on April 6, 1989. 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 concerning this matter, please contact me.

Sincerely,



Melissa A. Warheit
Executive Director