



OHIO ETHICS COMMISSION

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

June 18, 1991

Informal Opinion 1991-INF-0618

Linda M. Srnec

Dear Ms. Srnec:

You have asked whether the Ohio Ethics Law and related statutes would prohibit you from serving as the clerk-treasurer of the Village of Poland in light of the fact that your husband is employed by the Office of the Auditor of State as an audit supervisor in the Youngstown District Office.

Division (D) of Section 102.03 of the Revised Code reads 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 character as to manifest a substantial and improper influence upon him with respect to his duties.

The term "public official or employee" is defined for purposes of Section 102.03 in R.C. 102.01 (B) and (C) to include any officer or employee of any office or department of the state. Therefore, your husband is, as an employee of the Auditor of State's Office, a "public official or employee" for purposes of Section 102.03. See Ohio Ethics Commission Advisory Opinion No. 82-002. 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). Compensation and other pecuniary interests are considered to be "anything of value" for purposes of R.C. 102.03. See Advisory Opinions No. 79-008, 84-010, 86-007, 88-002, 90-002, and 90-004.

The Ethics Commission has held that R.C. 102.03(D) prohibits a public official or employee from acting in any situation where he would have an inherent conflict of interest such that his independence and objectivity of judgement could be impaired. See Advisory Opinion No. 90-008. More specifically, the Commission has held that a public official or employee is prohibited by R.C. 102.03(D) from reviewing or acting upon, work performed or prepared by a party for compensation, where the official's or employee's relationship with that party would subject the official or employee

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to an inherent conflict of interest which could impair his objectivity and independence of judgment in carrying out his official decisions and responsibilities with respect to that matter. See Advisory Opinions No. 82-001, 83-001, 84-004, 89-016, 90-008, and 90-011. It is apparent that a public official's or employee's objectivity and independence of judgment could be impaired if he were to review and act upon matters in which his spouse had an interest, and the Commission has previously concluded that Section 102.03(D) prohibits a public official or employee from participating in any matter involving the pecuniary interests of his spouse. See Advisory Opinions No. 79-008, 84-010, 85-011, 89-008, and 90-004. Therefore, a public official or employee is prohibited by R.C. 102.03(D) from acting in his official capacity to review or act upon any work performed or prepared by his spouse, where the spouse has earned compensation for such work or where the spouse's financial interests are otherwise affected by, or dependent upon, such matter.

In this instance, you are a candidate for the office of village clerk-treasurer. See R.C. 733.261(A) and (C). A village clerk-treasurer is responsible for keeping the accounts and financial records of the village, and for handling the village's public funds. For example, the village clerk-treasurer must keep a record of the proceedings of the village council, and of the rules, by-laws, resolutions, and ordinances passed or adopted by council. R.C. 733.27. The clerk-treasurer must also keep the books of the village, including statements of moneys received and expended, property owned by the village and the income derived therefrom, and all taxes and assessments, R.C. 733.28, and must keep an account of all moneys received by him, and all disbursements made by him, R.C. 733.43. The officer must receive taxes levied and assessments made, moneys accruing to the village from judgements, fines, penalties, forfeitures, licenses, and costs taxed in mayor's court, and debts due the village. R.C. 733.44. The moneys must also be disbursed by the clerk-treasurer as authorized by law. Id. See also R.C. 733.46 (the village clerk-treasurer "shall receive and disburse all funds of the municipal corporation and such other funds as arise in or belong to any department or part of the municipal corporation"). The clerk-treasurer must settle and account with the council and must report to council the financial condition of the village, the amount received by him, and the disbursements made. R.C. 733.45.

The clerk-treasurer is also considered to be the village's fiscal officer for purposes of Chapter 5705 of the Revised Code--the tax levy law. See R.C. 5705.01(D). For example, the clerk-treasurer receives the proceeds of any village tax levy, and deposits such proceeds in the village treasury, R.C. 5705.03, certifies to the county auditor available village moneys, R.C.

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5705.36, and must certify that funds are available before any expenditure of village funds may be made, R.C. 5705.41. See also R.C. 5705.08, 5705.44. The clerk-treasurer also performs fiscal responsibilities under R.C. Chapter 135--the Uniform Depository Act, see, e.g., R.C. 135.01(M), 135.09, 135.14, 135.141, 135.17, and 135.18, and Chapter 133--the Uniform Public Securities Law, see, e.g., 133.01(L)(2), 133.27, 133.30, 133.33, 133.38, 133.42, and 133.55.

There is no question but that the Auditor's Office exercises review and supervisory functions over the performance of the village clerk-treasurer's official duties. Section 117.11 of the Revised Code provides that an audit of a political subdivision, see R.C. 117.01(D), covers the methods, accuracy, and legality of accounts, financial records, files, and reports of the office, and whether pertinent laws and Auditor requirements have been observed and complied with. The village books, financial records and reports, and other fiscal matters performed and overseen by a village clerk-treasurer will obviously be scrutinized during the course of an audit, and a village clerk-treasurer is clearly interested in the Auditor's examination of the village. See also R.C. 117.11(B)(1) and (2). The audit report may serve as the basis for civil actions for the recovery of public money or property against public officials, and for criminal proceedings against public officials. R.C. 117.28 and 117.29. Furthermore, the Auditor of State performs other oversight and regulatory responsibilities over the books, financial records, and fiscal affairs of political subdivisions. See, e.g., R.C. 117.38-.44.

It is assumed that you would receive compensation for the performance of your duties if you are elected village clerk-treasurer. Further, your financial interests could otherwise be affected by an audit of the village if there are findings for recovery against you as the village clerk-treasurer. It is apparent that your spouse, as an employee of the Auditor of State, would have an inherent conflict of interest if he were to participate in an audit of the village or in village fiscal, managerial, or legal matters, which could in turn, affect your interests as the clerk-treasurer of the village. R.C. 102.03(D) would, therefore, prohibit your spouse, who works as an audit supervisor for the Office of the Auditor of State, from participating in any way, formally or informally, in an audit of the village for which you serve as clerk-treasurer, or in any other matter involving the village. He may not participate in the performance of an audit of the village, supervise an audit, or otherwise use his authority or influence, formally or informally, with respect to an audit or any other matter involving the village.

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It must also be noted that if you are elected as village clerk-treasurer, then you would also be considered to be a public official for purposes of the Ethics Law and related statutes. See R.C. 102.01 (B) and (C); 2921.01 (A) and (B). I am enclosing a copy of the Ohio Ethics Law and a brochure that explains these laws in general language for you and your husband to review.

As a final matter, I note that the Auditor of State's Office also has internal administrative policies governing state examiners and other Office employees which concern potential conflicts of interest. The Ethics Commission has no authority to interpret these policies, and it is strongly suggested that the Auditor of State's Office be contacted for a determination of how the rules and guidelines of that Office relate to the issue you have raised.

This informal staff advisory opinion represents the views of the undersigned, 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 questions, or wish to request a formal opinion from the Commission, please contact our office.

Sincerely,



Melissa A. Warheit
Executive Director

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