



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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COLUMBUS, OHIO 43215-2940
(614) 466-7090

February 18, 1994 Informal Opinion 1994-INF-0218-2

David S. Blaugrund, Esq.

[REDACTED]

Dear Mr. Blaugrund:

You have asked if the Ohio Ethics Law and related statutes prohibit the Cleveland Director of Public Safety from divesting himself of his interest in a company that currently holds the cable television franchise with the city of Cleveland.

By way of history, you have described a series of facts important to answering the question. You have explained that, since mid-December 1993, your client has been the Director of Public Safety for the City of Cleveland, and that, prior to that, he was the Director of Public Service. Before he was employed by the municipality in either position, your client purchased a .015% limited partnership interest in a cable television company ("Company A"). Prior to your client's employment with the city, Company A entered into a franchise agreement with the city. At the time of his employment by the city, your client made full disclosure of his interest in Company A. The city cable franchise is administered by the Parks Department. Your client has never been directly or indirectly involved, in either of the positions he has held with the city, in matters involving the cable franchise agreement.

Your question is whether the Ohio Ethics Law and related statutes prohibit the Director of Public Safety from profiting from the sale of the Cleveland cable television franchise, from Company A, the company that presently holds the interest, to a new franchisee ("Company B"). Once again, your client owns a .015% limited partnership interest in Company A. Company A will essentially be bought out by Company B, and the interests of the partners and limited partners will be sold to Company B, the new franchisee. The sale must be approved by the city council. Your client is not involved in the approval process and does not supervise anyone involved in the approval process. If the sale goes through, Company A will cease to exist. Your client will have nothing to do with, and will have no financial interest in, Company B, the cable franchisee that will replace Company A.

Based on the facts you have described, the Director of Safety is not prohibited from securing a benefit, in the form of income, from the sale of the Cleveland cable television franchise from Company A, in which he owns a .015% limited partnership, to Company B. However, as explained in the following analysis, the Ethics Law and related statutes will restrict and condition the Director of Public Safety's conduct with respect to the sale.

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Division (D) of R.C. 102.03 prohibits a public official or employee from using or authorizing the use of the authority or influence his public position 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. Any person employed by a city, including a city safety director, is a "public official or employee," for purposes of R.C. 102.03 (D). See generally Ohio Ethics Commission Advisory Op. No. 90-010. The term "anything of value" is defined to include money, goods, and every other thing of value. R.C. 1.03 and 102.01 (G). A definite, pecuniary benefit to a person or his private business is within the definition of "anything of value." See Advisory Ops. No. 85-006, 86-007, and 90-003. In the situation you have described, the sale of the cable franchise may result in a thing of value, in the form of income, to your client. See generally Advisory Op. No. 90-002.

The Ethics Commission has held that public officials and employees are not absolutely prohibited from holding outside private business interests so long as no actual conflict of interest exists. However, R.C. 102.03 (D) prohibits a public official or employee from using his official authority or influence to secure anything of value for himself, a company in which he has an ownership interest, 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 official duties. See Advisory Ops. No. 88-005, 90-002, and 90-003.

In the situation you have described, the city must approve the sale of the cable franchise from Company A to Company B. R.C. 102.03 (D) prohibits the city safety director from participating in matters that would affect his personal, pecuniary interests. Therefore, your client is prohibited, by R.C. 102.03 (D), from discussing, deliberating, recommending, formally or informally lobbying, or using his position with the city in any other way to secure approval, by the city, of the cable franchise sale from Company A to Company B. See Advisory Op. No. 90-002 and 90-003. Further, R.C. 102.03 (D) prohibits your client from supervising any other city employees in the approval of the cable franchise sale if he would benefit from the sale. See Advisory Ops. No. 83-001 and 90-003. However, so long as your client has no role in the approval of the sale by the city, he is not prohibited from receiving income generated by the sale of the cable franchise from Company A to Company B.

Finally, R.C. 102.03 (B) provides that a public official or employee is prohibited from disclosing or using any confidential information, acquired by him in the course of his public employment, without appropriate authorization. If your client has gained any confidential information, relative to the cable franchise or on any other issue, in his job with the city, he is prohibited from disclosing or using that information without appropriate

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authorization. There is no time limit for this prohibition, and it is effective during your client's public service as a city employee and after he leaves his public position.

This informal advisory opinion was approved by the Ethics Commission at its meeting on February 18, 1994. The opinion 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 and does not purport to interpret other laws or rules. If you have any further questions, please feel free to contact this Office again.

Sincerely,


Jennifer A. Hardin
Staff Attorney