



OHIO ETHICS COMMISSION

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November 3, 1997.

Informal Opinion 1997-INF-1103-1

The Honorable Jean L. Jamison
Mayor, Village of Seville

Dear Mayor Jamison:

In your letter to the Ethics Commission, you ask whether the Ohio Ethics Laws and related statutes would prohibit you from participating in matters pertaining to the development of a residential subdivision if the subdivision borders property that you and your husband own and upon which you reside. In subsequent telephone conversations, you have explained that the subdivision has been approved, and that your question involves variances and other matters that may arise as development of the subdivision progresses.

As explained below, R.C. 102.03(D) prohibits you from discussing, deliberating, voting, or otherwise participating, formally, or informally, in the decisions of the public entity you serve that involve the variances and other matters in the subdivision if the variances and other matters affect property close enough to you and your husband own that the development would result in a definite and direct pecuniary benefit or detriment to the value of your property.

Facts

You state that you are the Mayor of the Village of Seville (Village). You state that the Village has a population of about 2200 and that it has experienced tremendous growth over the last few years. You state that there are currently three developers building subdivisions within the Village and you expect this growth to continue.

The Village is organized under a statutory plan of government. The mayor of a statutory village serves as president of the village council but has no vote except in the case of a tie. R.C. 733.24. The mayor of a statutory village also serves as a member of the village's planning commission. R.C. 713.01. In the instant situation, as a member of the Village Zoning and Planning Commission and Zoning Board of Appeals, you are in a position to participate in issues that will have a direct effect upon a subdivision that borders property owned by you and your husband.

You have described the development as well as the property in which you and your husband have an ownership interest. In summary, the development is a residential subdivision consisting of eleven acres that have been platted into thirty-seven lots along two streets. The map you have provided shows that your property is completely bordered on one side by lot number 23 and on the other side by lot number 24. The right-of-way of one of the subdivision's streets would "nip the

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corner" of your property but your property would have no frontage upon this street. You state that the building of the subdivision would not result in any enhancement of Village infrastructure services such as water, sewer, or electric to your property.

In light of this situation, the Village Zoning and Planning Commission asked the Village Solicitor to "render an opinion relative to conflict of interest." You have enclosed the information provided by the Solicitor. Upon initial review, the Solicitor determined that you are not prohibited from participating in matters pertaining to the development of a residential subdivision that borders property that you and your husband own and upon which you reside.

The Solicitor's discussion of the Ethics Commission's precedent regarding infrastructure improvements properly advises you regarding those issues. However, pursuant to its advisory authority, the Commission has considered the issue of property development adjacent to the property of a public official, separately and in addition to the issue of "infrastructure improvements," such as sewers and road improvements. The separate issue of property development is not presented in Advisory Opinion No. 92-013. In the instant situation, the subdivision is not an "infrastructure improvement" undertaken by the Village, such as the construction of water and sewer lines, sidewalks, paving, lighting, tree planting, that is designed for the general and uniform benefit of the entire Village, or a large portion thereof. Rather, the subdivision is a private undertaking by a real-estate developer that is subject to regulation by the appropriate Village agencies. See Adv. Op. No. 88-004. The development of the subdivision will result in the construction of public infrastructure in the form of roads and utility lines, but, as explained below, the issue that is of concern, in the instant situation, is not whether you will receive any benefit from the infrastructure improvements associated with the subdivision, but whether the development of the subdivision could have a detrimental or beneficial effect affect the value of your adjacent property.

You acted upon the Solicitor's advice and participated in the Planning and Zoning Commission's approval of the subdivision's preliminary plans. However, the developer contends that the Ohio Ethics Laws and related statutes prohibit you from participating in matters pertaining to a residential subdivision if the subdivision borders property that you and your husband own and upon which you reside. A Village Council Member, Mr. Paul Hoskinson, contacted the Office of the Ohio Ethics Commission on June 17, 1997 and asked if the Commission had ever rendered advice to a public official in a similar situation. In response to Mr. Hoskinson's inquiry, a copy of Advisory Opinion No. 92-019 was faxed to him on the same day. Advisory Opinion No. 92-019 holds that a city council member was prohibited from voting, discussing, deliberating, or otherwise using the authority or influence of his public position, formally or informally, in actions of the city council regarding a proposed road extension that would be located approximately 150 feet from the council member's property. You state that upon seeing that the holding of Advisory Opinion No. 92-019 conflicted with the Solicitor's advice, you believed "it would be best to request a ruling from the Ethics Commission on this matter."

Prohibition Imposed by R.C. 102.03(D)

The instant situation implicates the prohibition imposed by R.C. 102.03(D), which reads:

No public official or employee shall use or authorize the use of the authority or influence of 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 the public official or employee with respect to that person's duties.

As the Mayor of the Village, you fall within the definition of "public official or employee" for purposes of R.C. 102.03 and are subject the prohibition imposed by Division (D). R.C. 102.01 (B) and (C).

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. R.C. 102.03(G). The Ethics Commission has held that the beneficial or detrimental financial impact upon real property, created by a public body's land-use decision, is a thing of value for purposes of R.C. 102.03(D). Adv. Ops. No. 88-004 and 92-019. See also Adv. Ops. No. 79-003, 79-008, 80-007, and 85-006.

The Ethics Commission has held that R.C. 102.03(D) prohibits a public official or employee from participating, as a public official, formally or informally, with respect to land-use decisions affecting property bordering or near the public official's or employee's property because the land-use decision could have a definite and direct beneficial or detrimental financial impact upon the official's or employee's property. Adv. Ops. No. 88-004, 88-005, 92-013, and 92-019. For example, in Advisory Opinion No. 92-019, the Ethics Commission held that R.C. 102.03(D) prohibits a city council member from voting, discussing, deliberating, or otherwise using the authority or influence of his public position, formally or informally, in actions of the city council regarding a proposed road extension that would be located approximately 150 feet from the council member's property.

However, the Ethics Commission has held that R.C. 102.03(D) does not prohibit a public official or employee from participating or voting on general legislation that provides a uniform benefit to all citizens of the political subdivision, or a large portion thereof, including the public official or employee who participates or votes on the general legislation. Advisory Op. No. 88-004. For example, in Advisory Opinion No. 88-004, the Commission explained that R.C. 102.03(D) does not prohibit a city council member from participating in the enactment of a general zoning code, but does prohibit him from participating in the consideration of a zoning change or variance that could directly affect property in which he has an interest. The Commission has cautioned that each situation must be examined on its own facts in order to determine whether a public official is prohibited from participating in a matter. Adv. Op. No. 87-008.

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In the instant situation, it appears that the development of the land into a residential subdivision could either enhance or detract from the value of residences that border the subdivision. A variety of factors pertaining to the development of the subdivision could affect the value of adjacent or nearby property. For example, the construction of new buildings that are of a smaller size and simpler construction and lacking the value and attributes of existing houses in the immediate area could have a negative financial impact upon the value of the older homes. On the other hand, the construction of large and well-designed homes of significant architectural quality could have a beneficial impact upon all property values in the immediate area. In addition, you have in fact stated that the right-of-way of a proposed road "nips the corner" of your property. Beyond the potential decrease to the value of your property due to this proximity to your property, the resulting operation of vehicular traffic upon this road could detract from the present character of your property and thereby decrease its value. This may be true regardless of the fact that you would have no egress onto the road. Adv. Op. No. 92-019. Concerns regarding the impact of development would also be heightened in the instant situation where the Village is, as you have stated, experiencing tremendous growth and where there are currently three developers building subdivisions within the Village.

Absent some independent assessment to the contrary, from your description of the development, it appears that the development would have a definite impact on the value of the property you and your husband own. This would also be true about specific decisions regarding variances and other development decisions for plats or roads within the development that are either adjoining or near your property. Therefore, unless there is some assessment that Village or planning commission decisions on variances or other matters regarding the continuing development will neither enhance nor decrease the value of the property that you and your husband own from a disinterested and independent third party, R.C. 102.03(D) prohibits you from discussing, deliberating, voting, or otherwise participating, formally, or informally, in the decisions of the Village that involve the subdivision.

Conclusion

As explained above, R.C. 102.03(D) prohibits you from discussing, deliberating, voting, or otherwise participating, formally, or informally, in the decisions of the public entity you serve that involve the variances and other matters in the subdivision if the variances and other matters affect plats close enough to the property you and your husband own that the development would result in a definite and direct pecuniary benefit or detriment to the value of your property.

The prohibition that R.C. 102.03(D) imposes upon you in your position as a member of the Village's Zoning and Planning Commission and Zoning Board of Appeals, because of the impact this development will have on the value of our property, does not prohibit the Zoning and Planning Commission and Zoning Board of Appeals from acting, without your participation, in matters pertaining to the subdivision. See generally Gitlin v. Berea, No. 58062 (Cuyahoga County

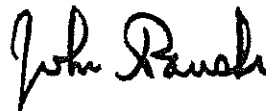
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February 15, 1990) ("Generally where a member of a legislative body is disqualified due to interest, the disqualification is treated as a vacancy because the member is not qualified to act. . . . Further, when an office is treated as vacant, the number of members [needed to pass a resolution] is reduced accordingly.").

Finally, the Ethics Commission has held that R.C. 102.03(D) does not prohibit a public official or employee who owns property that will be affected by his political subdivision's land-use regulations from appearing before agencies of his political subdivision and advocating his views on a matter that would affect his property in the same manner available to any other private citizen. Adv. Op. No. 92-019. For example, you are not prohibited from appearing before the Village Zoning and Planning Commission, the Zoning Board of Appeals, or other Village agencies, and offering testimony regarding the planning of a subdivision that borders your private property, in behalf of your own personal interest. You may not participate in Village proceedings in a context or circumstance that is not available to any other private citizen.

This advisory opinion was approved by the Ethics Commission at its meeting on November 3, 1997. This opinion is based on the facts presented, and is limited to questions arising under Chapter 102. and Sections 2921.42, 2921.421, 2921.43 of the Revised Code. The Commission apologizes for the delay in responding to your request, and regrets any inconvenience this delay may have caused. Please do not hesitate to contact this Office if you have any further questions or desire any additional information.

Very truly yours,



John Rawski
Staff Attorney