



OHIO ETHICS COMMISSION

8 East Long Street, 10th Floor

Columbus, Ohio 43215

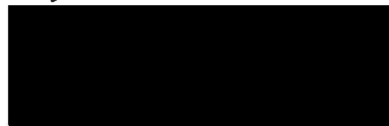
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April 17, 1998

Informal Opinion 1998-INF-0417

William B. Young, Law Director
City of Medina



Dear Mr. Young:

In letters received by the Ohio Ethics Commission on December 8, 1997, and January 29, 1998, you have asked whether the Ohio Ethics Law prohibits those Medina City Council members described herein who have property and business interests in the downtown square area from participating in deliberations and decisions regarding an initiative petition which may impact truck traffic in the square. As set forth below, the Medina City Council members are prohibited by R.C. 102.03(D) from voting, discussing, deliberating, or otherwise using the authority or influence of their public positions, formally or informally, with respect to any matter before city council which would provide a definite and direct, pecuniary benefit or detriment to their property or business interests. However, based upon the facts you have described, the Council members discussed would not derive a definite and direct pecuniary benefit or suffer a definite and direct pecuniary detriment from amending or revoking the initiative petition to open the Reagan Parkway to truck traffic. Therefore, R.C. 102.03(D) does not prohibit these Council members from participating in the proposed action.

Facts

You have stated that the Medina City Council approved the construction of a "perimeter feeder street," known as the Reagan Parkway, which connects traffic from the east and north sides of Medina. You have explained that a "significant motivation" for the construction of the Reagan Parkway was to alleviate congestion in the Medina downtown square area. You have stated that there is a "great deal" of truck traffic on the downtown square because truck traffic is currently limited to state routes and designated truck routes. The Medina downtown square area is formed by the convergence of four state routes. You have added that this truck traffic is "objectionable" due to the heavy traffic, noise, and particulate pollution.

The Reagan Parkway, built to heavy commercial standards to withstand anticipated traffic, was completed in 1996. You have stated that residents near the Parkway anticipated that the city would be inclined to open the Parkway to truck traffic. You have explained that some of these residents circulated an initiative petition to prevent any type of delivery vehicle from using East Reagan Parkway, as well as other designated streets within Medina. The initiative petition was approved by 71% of the voters, and thus Ordinance No. 339.15 was passed.

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You have stated that the Medina City Council wishes to address problems which it perceives with Ordinance No. 339.15. Specifically, you have explained that some Council members perceive that a "technical" reading of the Ordinance could render some areas of Medina inaccessible by any delivery vehicle and that traffic flow in Medina could be better handled if the Ordinance's restrictions were eliminated or reduced. You have asserted that Council members have a legitimate interest in enacting traffic regulations, and that the Council has the power to amend or revoke ordinances passed by initiative petition.

You have explained, however, that a majority of the Council members either personally maintain a business, or have an interest in a business owned by a family member or business associate, located in the vicinity of the Medina downtown square area. You have stated that the proponents of the initiative petition have alleged that the Ohio Ethics Law would prohibit these Council members from participating in any deliberations or decisions regarding Ordinance No. 339.15. Specifically, the proponents have argued that these Council members have a conflict of interest because the businesses on the downtown square will receive a benefit "as a result of the diminution of truck traffic."

Use of Authority or Influence to Secure a Thing of Value--R.C. 102.03(D)

As a preliminary matter, you have stated that you believe, based upon 1923 Ohio Attorney General Opinion No. 471, that the Medina City Council has the power to amend or revoke ordinances passed by initiative petition. The Ohio Ethics Commission does not have the statutory authority to interpret that Opinion, or to reach its own conclusions regarding the Council's power to amend or revoke ordinances passed by initiative petition. Accordingly, you will have to contact the Ohio Attorney General's Office in order to confirm the Council's power to act in these matters.

You have asked whether the Ohio Ethics Law prohibits those Medina City Council members who have property or business interests in the downtown square area from participating in deliberations and decisions regarding an initiative petition which may have an impact upon truck traffic in the square. The Commission has cautioned that each case must be examined on its own facts in order to determine whether a public official is prohibited from participating in a matter. See Ohio Ethics Commission Advisory Opinion No. 87-008. Your question implicates R.C. 102.03(D), which provides:

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.

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The term "public official or employee" is defined for purposes of R.C. 102.03(D) to include any person who is elected or appointed to a city office. See R.C. 102.01(B) and (C). The Ethics Commission has previously held that a city council member is a "public official or employee" for purposes of R.C. 102.03(D). See Adv. Ops. No. 89-008, 90-004, 91-004, 92-012, and 92-019.

The term "anything of value" is defined for the purposes of R.C. 102.03(D) to include money and any other definite pecuniary benefit. See R.C. 102.01(G) and R.C. 1.03; Adv. Op. 92-019. Specifically, the Commission has held that a decision by a public entity which affects the commercial or economic status of a person or his private business falls within the definition of "anything of value." See Adv. Op. No. 93-016.

The Commission has held that R.C. 102.03(D) prohibits a public official or employee from using his authority or influence, formally or informally, to secure anything of value for himself or any other party, if the relationship between the employee and the other party is such that the employee's objectivity and independence of judgment could be impaired. See Adv. Ops. No. 88-004, 89-005, and 97-002. Specifically, the Commission has stated that R.C. 102.03(D) prohibits a public employee from using his authority or influence in any matter which would render a **particular and definite** pecuniary benefit or detriment to a business, or to the value of property, in which he has an interest. See Adv. Ops. No. 92-019 and 93-016. Accordingly, the Medina City Council members are prohibited by R.C. 102.03(D) from voting, discussing, deliberating, or otherwise using the authority or influence of their public positions, formally or informally, with respect to any matter before city council which would provide a definite and direct, pecuniary benefit or detriment to their property or business interests. Id.

The Commission has stressed that R.C. 102.03(D) will prohibit a public official from participating in a matter only if the matter would result in a "definite and direct pecuniary benefit or detriment." See Adv. Ops. No. 90-004 and 93-016 (emphasis added). For example, in Advisory Opinion No. 93-016, the Commission was asked whether the Ethics Law prohibited members of a county district board of health, who had business interests in restaurants, bars, concession stands, and convenience stores, from participating in consideration of legislation which would regulate smoking in public places within the county. While the proponents of the legislation argued that the regulation of smoking would cause these businesses to lose revenue, the Commission noted that it was just as likely that revenue would increase as non-smokers began frequenting the businesses once smoking was regulated. See Adv. Op. No. 93-016. Stating that the effect of the legislation was "merely speculative" in its impact, and that any diminution of revenue would depend upon the individual behavior of large numbers of smokers, the Commission concluded that the board members' businesses would not derive a definite and direct pecuniary benefit or suffer a definite and direct pecuniary detriment if the board were to enact the legislation. Id. Therefore, R.C. 102.03(D) did not prohibit the board members from participating in the proposed legislation.

Likewise, the issue in this case is whether the businesses on the downtown square, and thus those Medina City Council members you have described who either personally maintain a business or have an interest in a business owned by a family member or business associate, would derive a definite and direct pecuniary benefit, or suffer a definite and direct pecuniary detriment, if the Council amended or revoked the initiative petition to open the Reagan Parkway to truck traffic. As stated above, the proponents of the initiative petitions have contended that these Council members' businesses on the downtown square will receive a benefit "as a result of the diminution of truck traffic." However, as with the smoking regulation discussed above, it is speculative to assert that the businesses in which the Council members have an interest would receive a definite and direct pecuniary benefit if the Council opened the Reagan Parkway to truck traffic.

First, any benefit or detriment will depend upon the individual behavior of truck drivers, truck owners, suppliers, and route planners (which can even include route planning computer software). Based upon the speed and congestion of traffic on the Parkway, or based upon a lack of knowledge that the Parkway is open to truck traffic, these individuals may choose to ignore it and continue traveling through Medina by using the familiar state routes (which are unaffected by the Ordinance) through the downtown square. Also, while it may be likely that opening the Reagan Parkway to truck traffic may decrease the amount of truck traffic on the downtown state routes, and thereby provide a benefit to the businesses on the downtown square area, it is equally possible to speculate that overall congestion on the downtown square will increase as ordinary drivers avoid the truck traffic on the Parkway. In short, it is not clear if or how the property values of the downtown businesses would be affected by opening the Parkway to truck traffic, especially considering that these businesses would still be located adjacent to state routes that are open to truck traffic.

As stated above, the Commission has cautioned that each case must be examined on its own facts in order to determine whether a public official is prohibited from participating in a matter. See Adv. Op. No. 87-008. The Medina City Council members are prohibited by R.C. 102.03(D) from voting, discussing, deliberating, or otherwise using the authority or influence of their public positions, formally or informally, with respect to any matter before city council which would provide a definite and direct, pecuniary benefit or detriment to their property or business interests. See Adv. Ops. No. 92-019 and 93-016. However, because the facts you have described in this matter demonstrate that the Council members discussed would not derive a definite and direct pecuniary benefit or suffer a definite and direct pecuniary detriment from amending or revoking the initiative petition to open the Reagan Parkway to truck traffic, R.C. 102.03(D) does not prohibit the Council members from participating in the proposed action.

Summary and Conclusion

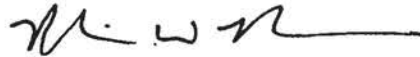
As set forth above, the Medina City Council members are prohibited by R.C. 102.03(D) from voting, discussing, deliberating, or otherwise using the authority or influence of their public

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positions, formally or informally, with respect to any matter before city council which would provide a definite and direct, pecuniary benefit or detriment to their property or business interests. However, based upon the facts you have described, the Council members discussed would not derive a definite and direct pecuniary benefit or suffer a definite and direct pecuniary detriment from amending or revoking the initiative petition to open the Reagan Parkway to truck traffic. Therefore, R.C. 102.03(D) does not prohibit these Council members from participating in the proposed action.

This informal advisory opinion was approved by the Ohio Ethics Commission on April 9, 1998, and is based on the facts presented. It is limited to questions arising under Chapter 102. and Sections 2921.42, 2921.421, and 2921.43 of the Revised Code, and does not purport to interpret other laws or rules. If you have any questions, or need additional information, please feel free to contact this Office again.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Blaine W. Brown', with a long horizontal flourish extending to the right.

Blaine W. Brown
Staff Attorney