



OHIO ETHICS COMMISSION

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May 15, 1998

Informal Opinion 1998-INF-0515-2

Daniel P. Stringer
Law Director
City of Avon

Dear Mr. Stringer:

You have asked whether the Ethics Law prohibits a member of city council from participating in matters pending before council, including zoning and tax abatement issues, that affect a developer in the city. The council member is the owner of a business that you have stated has sold over \$50,000 worth of equipment to the developer.

As explained below, under the circumstances that you have presented, the city council member is prohibited from participating in matters pending before city council that affect the developer.

Facts

You state that a private developer is engaged in substantial residential and commercial real estate development within the city. City council is required to approve, such as zoning and tax abatements matters, that pertain to these developments. You state that a member of city council owns a business that is located approximately fifteen miles outside the city. The council member's business sells equipment that the developer uses. Other businesses that are located close to the city also sell the same equipment. You state that the council member's company has sold in excess of \$50,000 of equipment to the developer during the period of time the developer has been engaged in ongoing development within the city. You state that all transactions between the developer and the council member have been at arm's length and all prices have been competitive.

R.C. 102.03(D) and (E)--Conflict of Interest Prohibitions

Your attention is directed to R.C. 102.03(D) and (E), which read:

- (D) 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.

- (E) No public official or employee shall solicit or accept 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.

A "public official or employee" is defined for purposes of R.C. 102.03 to include any person who is elected or appointed to an office of a political subdivision. R.C. 102.01(B) and (C). A member of city council is a public official for purposes of R.C. 102.03(D) and (E). Ohio Ethics Commission Advisory Opinions No. 88-004 and 89-008.

R.C. 1.03 defines the term "anything of value" for purposes of R.C. 102.03 to include money and every other thing of value. R.C. 102.01(G). A definite pecuniary benefit to a person or his business is considered to be a thing of value under R.C. 102.03(D) and (E). Advisory Ops. No. 79-008, 85-011 and 86-007. The Ethics Commission has held that the beneficial or detrimental financial impact upon the value of real property, created by a public agency's land use decision, such as a zoning and tax abatement decision, is a thing of value for purposes of R.C. 102.03(D). Adv. Ops. No. 88-004, 88-005 and 92-019. See also Adv. Ops. No. 79-003 and 85-006.

Prohibition Imposed by R.C. 102.03(D)—Interests of Other Parties

As explained below, it is not necessary for a public official or employee to have a personal pecuniary interest in a matter to invoke the prohibition imposed by R.C. 102.03(D). When originally enacted, R.C. 102.03(D) prohibited a public official or employee from using his official position to secure anything of value for himself "that would not ordinarily accrue to him in the performance of his official duties, which thing is of such character as to manifest a substantial and improper influence upon him with respect to his duties." The Ethics Commission generally interpreted this language to prohibit a public official or employee from participating in matters that would benefit the public official's or employee's own financial interests. Adv. Ops. No. 79-003, 80-007, and 85-006.

R.C. 102.03(D) was amended in Am. Sub. H.B. 300, effective September 17, 1986, to delete the requirement that the thing of value be secured by the public official for himself, thereby broadening the scope of the prohibition. Adv. Op. No. 88-004. Therefore, it is not necessary to demonstrate that a public official or employee would himself derive a personal, pecuniary benefit from his participation in an official matter in order to show a violation of R.C. 102.03(D). Id. However, R.C. 102.03(D) still requires that the thing of value, whether it is secured for the official or for someone else, be of such a character as to manifest a substantial and improper influence upon the official with respect to his duties. Id.

The Ethics Commission has held that R.C. 102.03(D), in its amended form, prohibits a public official or employee from participating in matters that will benefit parties with whom he has a close family, economic, or business relationship because the relationships may impair the public official's objectivity and independence of judgment. Adv. Ops. No. 88-004, 89-008, and 97-002. For example, in Advisory Opinion No. 88-004, the Ethics Commission held that R.C. 102.03(D) prohibits a member of a city council from voting, deliberating, participating in discussions, or otherwise using his official authority or influence with regard to any matter that would provide a

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definite and particular pecuniary benefit or detriment to property owned by a business associate, because the relationship between the public official and his business associate is such that the official's objectivity and independence of judgment could be impaired by the relationship.

Precedent—Matters Affecting Customers or Clients

The Ethics Commission has held that a public official's or employee's relationship with a customer or client, merely because the individual is a customer or client, is generally not sufficient to manifest a substantial and improper influence upon the official or employee with respect to his duties. Adv. Ops. No. 90-008 and 91-004. However, the Commission has repeatedly stated that the application of R.C. 102.03(D) and (E) are dependent upon the facts and circumstances of each individual situation. Adv. Ops. No. 87-007 and 89-003. In some situations, the Commission has held that R.C. 102.03(D) prohibits a public official or employee from participating in matters affecting a customer or client because the official or employee would also have a direct or contingent interest in the outcome of his public agency's decision or recommendation. Id.

For example, the Commission held, in Advisory Opinion No. 91-004, that R.C. 102.03(D) prohibits a city planning commission member, who is an employee and stockholder of a bank, from participating in any matter affecting the financial interests of a bank customer if the bank would have a direct or contingent interest in the planning commission's decision. The Commission held in Advisory Opinion No. 91-004:

[I]f a customer wished to secure a loan from the bank to finance a construction or development project, but initiation of the project was dependent upon the planning commission approving rezoning of the property, then the bank's financial interests would be dependent upon the planning commission's action and the planning commission member would be prohibited from participating in the matter.

See also Adv. Op. No. 90-008 (a city council member who is employed by a private law firm is prohibited from participating in a matter before city council in which a client of the council member's law firm has a contingent interest and the law firm's receipt of client fees is dependent upon the council's determination of the matter).

Application of Precedent

Under the circumstances that you have presented, the council member's company has sold in excess of \$50,000 of equipment to the developer and the developer is interested in land use issues pending before city council. These sales have occurred through a business that is located fifteen miles outside the city, when other businesses located within the city also sell the equipment. This is a substantial amount of business between the council member and the developer. The amount of equipment that the developer would need, and thus be required to purchase, may be dependent, to some degree, upon the city council's decisions regarding land use issues. If the city council were deciding matters that would limit either the number of homes in a

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residential subdivision or the scale of a commercial endeavor that would be undertaken by the developer, for example, then such a decision would affect the amount of equipment that the developer would require and thus, the city council's decision would have an impact upon the city council member's business.

In the instant situation, the city council member is the owner of a company that does a substantial amount of business with a particular customer and the amount of sales may be affected by the decisions of city council regarding the customer. Given the facts and circumstances in this situation, the relationship between the city council member and his customer is such that the council member's objectivity and independence of judgment could be impaired when considering the interests of his customer. Therefore, in the instant situation, R.C. 102.03(D) prohibits the city council member from using the authority or influence of his office with respect to land use matters that affect the interests of his customer.

R.C. 102.03 (B)--Disclosure of Confidential Information

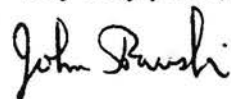
Finally, your attention is directed to Division (B) of R.C. 102.03, which prohibits the city council member from disclosing confidential information that he acquired in his official position and from using such information, without appropriate authorization. Adv. Op. No. 89-006. This prohibition has no time limit. Id.

Conclusion

As explained above, under the circumstances that you have presented, the city council member is prohibited from participating in matters pending before city council that affect the developer.

This informal advisory opinion was approved by the Ethics Commission at its meeting on May 15, 1998. It represents the views of the undersigned, 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 further questions or desire additional information, please feel free to contact this Office again.

Very truly yours,



John Rawski
Staff Attorney