

OHIO ETHICS COMMISSION

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Informal Opinion 1999-INF-0507-1

David A. Yost
Burkam, Yost & Fuller

Dear Mr. Yost:

In your letter received by the Ethics Commission via fax on February 17, 1999, you ask several questions pertaining to restrictions that the Ohio Ethics Law and related statutes would impose upon the private practice of law by yourself and your law partners if you were appointed to the position of Delaware County Auditor. On March 4, 1999, you were appointed to the vacant position.

You state that you are a partner in a law firm and ask whether, now that you are the Delaware County Auditor:

1. You may continue to practice law in the Delaware County Courts; and
2. Your partners may accept appointments as public defenders to represent indigent clients in the Delaware County Courts.

In your initial letter, you had also asked whether your law firm could represent private clients in annexation and zoning issues. In a subsequent conversation, you explained that you and your law partners have agreed that you and the partners will not represent clients in annexation and zoning matters in Delaware County. For this reason, the Commission will not consider that issue. Should you and your partners reconsider this area of practice, you need to contract our office for further guidance.

As discussed more fully below, the Ohio Ethics Law and related statutes do not absolutely prohibit you from retaining your partnership in the law firm, or from practicing as a sole practitioner, while serving as county auditor. The laws do, however, impose serious limitations on the nature and extent of your practice within Delaware County. In addition, the prohibitions imposed upon you do not preclude your law partners from serving as court-appointed public defenders within Delaware County while you serve as county auditor. The laws do, however, prohibit you from using your working relationship with judges and other public officers and employees to affect, formally or informally, their selection of your law partners as court-appointed counsel or the setting of your law partner's compensation and expenses.

You should also be aware that issues concerning the professional conduct of attorneys under the Code of Professional Responsibility are likely to be implicated if you practice law while serving as county auditor and have law partners who serve as court-appointed counsel. These issues do not fall within the jurisdiction of the Ethics Commission. You and your law partners should refer these issues to the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court for guidance under the Code of Professional Responsibility to avoid any appearance of impropriety.

You also ask whether your withdrawal from the partnership would remedy conflicts arising under the Ethics Law and related statutes. The restrictions discussed below that relate to your connection with the partnership would be lifted if you withdrew from the partnership. You state, however, that even if you withdrew from the partnership, you would like to continue to practice as a sole practitioner. The limitations on the nature and extent of your practice within Delaware County that are discussed below would apply regardless of whether you remained a member of the partnership or became a sole practitioner.

Representation of Clients Before the Delaware County Courts

Your first question is whether you can practice law before the Delaware County courts now that you have been appointed to the position of county auditor. Your attention is directed to R.C. 102.04(C), which reads:

Except as provided in division (D) of this section, no person who is elected or appointed to an office of or employed by a county, township, municipal corporation, or any other governmental entity, excluding the courts, shall receive or agree to receive directly or indirectly compensation other than from the agency with which he serves for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter which is before any agency, department, board, bureau, commission, or other instrumentality, excluding the courts, of the entity of which he is an officer or employee. (Emphasis added.)

A county auditor is "a person . . . appointed to an office of . . . a county" and subject to the prohibitions imposed by R.C. 102.04(C). "Compensation" is defined for purposes of R.C. 102.04 as money, a thing of value, or a financial benefit, and would include the money that an attorney receives from clients for legal services, whether from hourly fees or a contingency agreement. R.C. 102.01(A); Ohio Ethics Commission Advisory Opinion No. 92-006.

Therefore, now that you are the county auditor, you are prohibited from accepting "compensation" for any service rendered or to be rendered by you personally in any case, proceeding, application, or other matter that is before any agency, department, board, bureau, commission, or other instrumentality, of Delaware county, excluding the courts.

R.C. 102.04(C) focuses on the public official or employee "personally" rendering services. The Ethics Commission has repeatedly reinforced the premise that R.C. 102.04(C) prohibits an individual who holds an elected office of a political subdivision from receiving compensation from a client for personally rendering services before an agency, department, board, bureau, commission, or other instrumentality, of the political subdivision. Adv. Op. No. 89-016.

The Ethics Commission has defined the rendering of services, for purposes of R.C. 102.04, as "the performing of services such as advising, consulting, representing or the like which involve matters 'before'" an agency, department, board, bureau, commission, or other instrumentality, of the county. Adv. Op. No. 75-006. The Commission has also explained that, for purposes of R.C. 102.04, a matter is "before" a governmental agency "when it is being considered by, decided by, in the presence of or under the official purview of an agency of a governmental entity." Adv. Op. No. 76-009. (However, R.C. 102.04(F) provides that the prohibition does not extend to the performance of ministerial functions including, but not limited to, the filing or amendment of tax returns, applications for permits and licenses, incorporation papers, and other documents.)

R.C. 102.04(D) sets out an exception to the prohibition in R.C. 102.04(C) that applies to public officials appointed to nonelective office and public employees. This exemption would not be applicable to you because you are appointed to an elected position. Adv. Op. No. 89-016.

Therefore, you are prohibited from accepting compensation for any non-ministerial service that you personally render in any case, proceeding, application, or other matter before any agency, department, board, bureau, commission, or other instrumentality, of the county. However, because R.C. 102.04(C) specifically excludes the courts, you are not prohibited from accepting compensation from a party other than the county for personally representing clients in a case, proceeding, application, or other matter before the Delaware County courts so long as you comply with other provisions of the Ethics Law. Further, R.C. 102.04(C) does not prohibit an individual who holds an elected office of a political subdivision from receiving compensation in the form of a distributive share of profits from a law firm in which he is a partner, provided that some other person personally renders the services. Adv. Ops. No. 74-009, 82-001, 86-004, and 89-016.

The Revolving Door Prohibition—R.C. 102.03(A)

Division (A) of Section 102.03 of the Revised Code, the "Revolving Door" prohibition of the Ohio Ethics Law, imposes restrictions upon present and former public officials and employees representing clients or acting in a representative capacity for any persons or entities.

R.C. 102.03(A) provides, in pertinent part:

No present or former public official or employee shall, during public employment or service or for twelve months thereafter, represent a client or act in a representative capacity for any person on any matter in which the public official or employee personally participated as a public official or employee through decision, approval,

disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion.

R.C. 102.03(A) sets forth the prohibitions that it imposes upon present and former public officials and employees, specifically: (1) a present or former public official or employee; (2) is prohibited from representing a client or acting in a representative capacity for any person (defined in Section 1.59 of the Revised Code to include an individual, corporation, partnership, association, or other similar entity); (3) before any public agency; (4) on any matter in which he personally participated as a public official or employee; (5) during government service and for one year thereafter. Adv. Ops. No. 80-008, 86-001, and 92-005.

Accordingly, R.C. 102.03(A) prohibits you, as appointed county auditor, from representing a client or any other party, either as a sole practitioner or as a partner of the law firm, before any public agency, on any matter in which you personally participated in your capacity of county auditor.

The term "represent" is defined in R.C. 102.03(A) to include "any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person." Examples of the types of activities that would fall within the term "represent," for purposes of this section, were described by the Ethics Commission in Advisory Opinion No. 86-001:

[T]his would include activities ranging from an appearance on behalf of a private client in a formal proceeding or meeting to informal "lobbying" of agency personnel by telephone or in person. It also includes written communications ranging from formal documents and filings to informal letters and notes. Even if the attorney or consultant does not sign the documents, letters, or notes, the prohibition would apply if she prepared the communication. If she merely consulted with the attorneys or other personnel who prepared the documents, letters, or notes, the prohibition would not apply.

It must be noted that R.C. 102.03(A) prohibits a present or former public official or employee from "representing" a client, new employer, or any other party, on a matter in which he personally participated, before any public agency, and not merely before the agency with which he was previously employed. Adv. Ops. No. 86-001 and 87-001. A "public agency" is defined in R.C. 102.01(C) to include "the general assembly, all courts, any department, division, institution, board, commission, authority, bureau or other instrumentality of the state, a county, city, village, township, and the five state retirement systems, or any other governmental entity."

R.C. 102.03(A) defines the term "matter" to include "any case, proceeding, application, determination, issue, or question, but does not include the proposal, consideration, or enactment of statutes, rules, ordinances, resolutions, or charter or constitutional amendments." The terms "case," "proceeding," "application," "determination," "issue," and "question" are not defined for purposes of R.C. 102.03(A). In Advisory Opinion No. 99-001, the Ethics Commission determined that the

term "matter" is broadly defined and encompasses many things. In that opinion, the Commission held:

"Matter" includes such concrete items as a specific occurrence or problem requiring discussion, decision, research, or investigation, a lawsuit or legal proceedings, an oral or written application, and a settlement of a dispute or question. "Matter" also includes such abstract items as a dispute of special or public importance and a controversy submitted for consideration.

However, the Commission also held that the Legislature did not intend the prohibition of R.C. 102.03(A) to be so broad as to encompass general subject matters.

R.C. 102.03(A) defines "personal participation" to include "decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion." In Advisory Opinion No. 91-009, the Ethics Commission held that "personal participation" in a matter also includes the exercise of "supervision or general oversight" over other personnel in their work on that matter since supervision involves decision-making, approval or disapproval, recommendation or advice, and other exercises of administrative discretion, by the supervisor, regarding that matter. See also Adv. Op. No. 86-001.

R.C. 102.03(A) prohibits you, during your public service as county auditor, and for a period of one year from the date you leave the position, from representing any client, before any public agency, including the courts, on any matter in which you personally participated while you served as county auditor.

Partners Accepting Appointments as Public Defenders—R.C. 2921.42(A)(1) and (A)(4)

Your second question is whether your law partners may accept appointments as public defenders within Delaware County.

You state that you and your partners accept appointments as public defenders on a contract basis. You state that you will not accept appointments while you serve as county auditor. However, you are concerned about the ability of your partners to continue to accept public defender appointments if you serve as county auditor, because the county auditor issues warrants on properly authorized public defender invoices. You have stated that approximately one-fifth of the practice of one of your law partners consists of appointments to represent indigent clients and the other partner's practice consists one-third of such appointments.

R.C. 120.33 establishes a statutory procedure for the appointment and payment of court-appointed attorneys to represent indigent persons in a county that does not use a county public defender or joint county public defender. See Att'y Gen. Adv. Op. No. 92-038. In a county where counsel is provided to indigent persons in this manner, the board of county commissioners establishes a schedule of fees for legal services by resolution. R.C. 120.33(A)(3). Prior to establishing the schedule, the board of county commissioners must request a proposed schedule of

fees for the county bar association. Id. This schedule is subject to review, amendment, and approval by the board of county commissioners. Id. The court approves the payment of compensation and expenses that do not exceed the amount fixed by the board of county commissioners. R.C. 120.33(A)(4). The county auditor draws a warrant on the county treasurer for the payment of counsel for compensation and expenses in the amount fixed by the court. Id. The county auditor must submit periodic reports, not less than annually, to the Ohio public defender commission, that document the amounts paid pursuant to the court's approval. Id. The board of county commissioners review and approve the auditor's report, and certify it to the Ohio public defender's office for reimbursement. Id.

Delaware County does have a county public defender's office. That office, however, does not have legal staff and relies on court-appointed attorneys, who engage in private practice, to represent indigent persons. Each judge provides the office with a list of attorneys that the judge has approved to represent indigent persons before the judge's court. The office assigns attorneys from these lists based upon availability of the attorney and classification of the charge against the defendant. The judge has the ability to disapprove the appointment.

Authorizing a Public Contract—R.C. 2921.42(A)(1)

Your attention is first directed to R.C. 2921.42(A)(1), which provides that no public official shall knowingly:

Authorize, or employ the authority or influence of his office to secure authorization of any public contract in which he, a member of his family, or any of his business associates has an interest.

The pertinent elements of this provision are: (1) a public official; (2) is prohibited from authorizing, or employing the authority or influence of his office to secure authorization; (3) of any public contract; (4) in which he, a member of his family, or any of his business associates; (5) has an interest. Adv. Ops. No. 78-002, 85-015, and 92-008, respectively. The Ethics Commission has previously held that a county auditor is a "public official" under R.C. 2921.01(A), and therefore is subject to the prohibitions in R.C. 2921.42(A)(1). Adv. Op. No. 95-006.

The term "public contract" is defined in R.C. 2921.42(G)(1)(a) for purposes of R.C. 2921.42 to include the purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of the state or a political subdivision. The Ethics Commission has stated that the provision of legal services, or a contract to provide legal services, to the state or a political subdivision is a public contract for purposes of R.C. 2921.42. Adv. Ops. No. 78-001, 83-002, 84-002, 90-007, and 92-003. Thus, a contract between the county and your law partners for the provision of legal representation for indigent persons is a "public contract" for purposes of R.C. 2921.42.

An "interest" which is prohibited under R.C. 2921.42 must be definite and direct and may be either pecuniary or fiduciary in nature. Adv. Op. No. 81-008. An individual who receives payment for services provided pursuant to a public contract has a definite and direct pecuniary interest in the public contract. Adv. Ops. No. 83-002 and 90-003. Also, a partner in a law firm who receives a distributive share of partnership profits has an interest in the contracts of the firm, even where he does not personally render the legal services. Adv. Ops. No. 78-001, 86-004, 89-004, and 90-007.

R.C. 2921.42 does not define the term "business associates," but the Ethics Commission has held that a business association is created whenever persons join together to pursue a common business purpose. Adv. Op. No. 86-002 (establishing the standard for determining the existence of a business association for purposes of R.C. 2921.42). See also Adv. Op. No. 92-003. The Ethics Commission has held that law partners are business associates for purposes of R.C. 2921.42. Adv. Ops. No. 79-001, 90-007, and 92-003.

R.C. 2921.42 (A)(1) prohibits a public official from "authorizing" a public contract in which a business associate has an interest, or employing the "authority or influence of his office" to secure authorization of a public contract in which his business associate has an interest. The exact actions prohibited by R.C. 2921.42(A)(1) turn on what constitute actions that "authorize" and "employ the authority or influence of his office." Adv. Op. No. 98-004. The Commission has interpreted this statutory language to mean that a public official will be deemed to have "authorized" a public contract, for the purposes of R.C. 2921.42, where the contract could not have been awarded without the approval of the public position in which that the official serves. See Adv. Ops. No. 87-004, 88-008, 90-010, and 92-012. Accordingly, R.C. 2921.42(A)(1) prohibits a public official from voting, discussing, deliberating, or otherwise participating in any part of his public agency's decision-making process with respect to the continuation, implementation, or terms and conditions of a public contract in which a business associate has an interest. Adv. Op. No. 92-003.

In the instant situation, the appointment of court-appointed attorneys to represent indigent persons is made by the office of the county public defender and approved by the judge. The county auditor has no authority to appoint counsel for an indigent person. As explained above, however, the county auditor draws a warrant on the county treasurer for the payment of counsel for compensation and expenses in the amount fixed by the court. The issue becomes whether your action of drawing a warrant on the county treasurer constitutes "authorization" for purposes of R.C. 2921.42(A)(1).

In Advisory Opinion No. 98-004, the Ethics Commission held that R.C. 2921.42(A)(1) does not prohibit a village clerk-treasurer from signing her husband's payroll checks where her husband's compensation as a village employee has been established by a council action, independent of the clerk-treasurer's authority, and cannot be altered by the clerk-treasurer. The Commission explained that, the clerk-treasurer's act of signing the check was a ministerial function performed without her having to exercise decision-making authority or discretion. See Adv. Op. No. 92-010 (a township clerk is not prohibited from signing her husband's check for compensation earned as township trustee). The facts and circumstances of each individual situation will determine whether the act of signing a check is prohibited by R.C. 2921.42(A)(1). See State v. Pinkney (1988), 36 Ohio St. 3d

190 (the signing of a check by the secretary of a port authority to an insurance company in which he was a shareholder and employee violated R.C. 2921.42(A)(1) where the port authority's board of directors did not specifically authorize the payment for the insurance contract by resolution or motion as required by the authority's rules and regulations). In this instance, as stated above, the county auditor draws a warrant to pay attorneys appointed by the court in an amount fixed by the court. The auditor has no independent decision-making authority with respect to the appointment of attorneys or their compensation.

Therefore, the prohibition imposed upon you by R.C. 2921.42(A)(1) does not preclude your law partners from being appointed as public defenders, even though you will be required to issue warrants for your partners.

It must be noted that R.C. 2921.42(A)(1) also prohibits a public official from employing the "authority or influence of his office" to secure authorization of any public contract in which a business associate has an interest. The words "authority or influence" are not defined for purposes of R.C. 2921.42. A primary rule of statutory construction requires that words used in a statute which are not defined must be construed according to rules of grammar and common usage. R.C. 1.42. The word "authority" is defined in Webster's New World Dictionary of the American Language as "power or influence resulting from knowledge, prestige, etc." Webster's New World Dictionary of the American Language 94 (2d College ed. 1970). The word "influence" is defined as "the power of persons . . . to affect others, seen only in its effects" and "the ability of a person . . . to produce effects indirectly by means of power based on . . . high position." Webster's New World Dictionary of the American Language 722 (2d College ed. 1970). Adv. Op. No. 94-002.

The General Assembly's use of the words "authority or influence" in R.C. 2921.42(A)(1) specifically characterize a broader range of activity than that described by the word "authorize." See Dougherty v. Torrence, 2 Ohio St. 3d 69, 70 (1982) (effect must be given to words used in a statute); Dungan v. Kline, 81 Ohio St. 371, 380-81 (the presumption is that every word in a statute is designed to have effect); Adv. Op. No. 74-001 ("it is to be assumed that the Legislature used the language contained in a statute advisedly and intelligently and expressed its intent by the use of the words found in the statute").

Therefore, the prohibition against a public official employing the "authority or influence of his office" to secure a public contract in which a business associate has an interest bars you from exercising the power and influence inherent in your position as county auditor to affect the decisions of other county officials to appoint an attorney who is your law partner. This prohibition includes, but is not limited to, discussing, recommending, or otherwise using the authority or influence of your position as county auditor, either formally or informally, in order to persuade other county officials to appoint an attorney who is your law partner to represent indigent clients. See also R.C. 102.03(D), set forth below.

Having an Interest in a Public Contract—R.C. 2921.42(A)(4)

However, as stated above, a partner in a law firm who receives a distributive share of partnership profits has an interest in the contracts of the firm, even where he does not personally render the legal services. In order to address this issue, your attention is directed to R.C. 2921.42(A)(4), which provides that no public official shall knowingly:

Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which he is connected.

As explained above, a partner in a law firm who receives a distributive share of partnership profits has an interest in the contracts of the firm, even where he does not personally render the legal services. Therefore, R.C. 2921.42(A)(4) would prohibit you from receiving a distributive share of partnership profits earned by your law partners for their services as court-appointed indigent counsel.

If you and your partners intend to continue to provide legal services that involve the county, the following steps should be followed to demonstrate that you do not have a prohibited interest in the contracts. First, the county contract for the provision of services must be made exclusively with the partner who is providing the representation, not the law partnership. Second, the payments made under the contract must use the attorney's social security number, not the law firm's tax identification number. Third, the funds received by the individual attorney for representing indigent clients cannot be co-mingled with those of the partnership or used to pay partnership expenses. Finally, the indigent representation cases assigned to the attorney must remain separate from any partnership business.

Conflicts of Interest—R.C. 102.03(D) and (E)

Your question also implicates 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 county auditor is a public official for purposes of R.C. 102.03(D) and (E). Adv. Ops. No. 83-001 and 95-006.

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. 102.01(G). A definite and direct pecuniary benefit is considered to be a thing of value under R.C. 102.03(D). Adv. Ops. No. 79-008, 86-007, and 89-005. The distributive share of profits that you receive as a partner in the law firm falls under the definition of "anything of value."

A thing of value is considered to be of an improper character for purposes of R.C. 102.03(D) and (E) whenever the thing of value is secured from a party that is interested in matters before, regulated by, or doing or seeking to do business with the public agency with which the official or employee serves, or where the thing of value could impair the official's or employee's objectivity and independence of judgment with respect to his official actions and decisions for the public agency with which he serves or by which he is employed. Adv. Ops. No. 79-002, 89-006, 90-012, and 92-009. The Ethics Commission has held that R.C. 102.03(D) 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. Op. No. 98-002.

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 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. See also Adv. Ops. No. 89-008, 89-015, 89-016, and 90-008. R.C. 102.03(E) prohibits a public official or employee from merely soliciting or receiving an improper thing of value and does not require that he use the authority or influence of his position to secure it. Adv. Ops. No. 86-011 and 89-006. The Ethics Commission has explained that a public official or employee must exercise his duties without hindrance by any improper influence. Adv. Op. No. 89-010.

The prohibitions imposed by R.C. 102.03(D) and (E) serve the public interest in effective, objective, and impartial government by preventing the creation of a situation that may impair the objectivity and independence of judgment, and therefore, the effectiveness of a public official or employee, or the political subdivision with which he serves. Adv. Ops. No. 89-014 and 90-002. The application of R.C. 102.03(D) and (E) is dependent upon the facts and circumstances of each individual situation. Adv. Ops. No. 87-007 and 89-003.

Auditor Issuing Warrants to Law Partners

In the instant situation, your law partners and the partnership are parties with whom you have a close economic and business relationship. The issue becomes whether issuing warrants to your partners on properly authorized public defender invoices in your capacity as county auditor would improperly influence you with respect to the duties you would exercise as county auditor.

The Ethics Commission has held that there are some acts required to be performed by public officials and employees that do not require the exercise of their objectivity and independence of judgment. In Advisory Opinion No. 92-010, the Commission addressed the issue of a township clerk, who was married to a member of the board of township trustees, exercising her statutorily mandated duties of preparing a voucher and warrant for the payment of her spouse. Because the compensation of township trustees is determined by statute, the trustees are entitled to a fixed amount of money for each day of service spent in the business of the township, up to two hundred days per year; the per diem rate of compensation is based upon the township's budget. However, by unanimous vote, the board of township trustees may receive an annual salary, to be paid in equal monthly payments. The Commission determined that the clerk's preparation of a voucher and warrant for the payment of a trustee's compensation, for an amount fixed by statute and, in the case of an annual salary, by the board of trustees, does not involve the clerk's personal judgment. The Commission held in Advisory Opinion No. 92-010:

The duties of a township clerk have been described as "largely ministerial." Ohio Op. Att'y Gen. 87-085. . . . The counter-signature of the clerk, affixed to a warrant for the payment of an official's statutorily mandated compensation, after payment of the compensation has been approved by the township trustees, and any other duties relative to the preparation of the warrant, are functions performed by the clerk without decision-making authority or discretion. In fact, the clerk must perform these same duties for the payment of her own compensation. The clerk can be compelled, through a writ of mandamus, to pay the compensation of a trustee if the right to relief is clear and the amount owed is fixed with certainty. See Noble v. Ellas at 12.

Accordingly, the Commission held that because the township clerk has no discretion with respect to the payment of her spouse, as township trustee, or the amount her spouse should be compensated, R.C. 102.03(D) does not prohibit the clerk from preparing a voucher and warrant for the payment of her spouse, the township trustee, or from countersigning the warrant for his compensation. See also Adv. Op. No. 98-004 (R.C. 102.03(D) and (E) do not prohibit a village clerk-treasurer from exercising statutorily mandated duties to implement a general budget appropriation which includes money to fund her husband's compensation and signing her husband's payroll checks because the compensation of village employees is established by village council, independent of the clerk-treasurer's authority.)

In the instant situation, as explained above, the appointment of attorneys who represent indigent persons is made by the office of the county public defender and the appointment is approved by the judge. In addition, the amount of compensation and expenses paid to court-appointed attorneys who represent indigent persons is determined by a statutory procedure that involves discretionary decision-making actions by the board of county commissioners, the court, and the Ohio public defender. The county auditor has no statutory authority to set or vary the amount of the counsel's compensation and expenses.

Accordingly, because the county auditor has no discretion with respect to the appointment or payment of attorneys who represent indigent persons, R.C. 102.03(D) does not prohibit you from issuing warrants, as county auditor, for the payment of your law partners on properly authorized public defender invoices.

Use of Position to Secure Appointments for Law Partners

You should also note that R.C. 102.03(D) prohibits you from using the authority or influence of your position as county auditor with regard to any matter that would provide a definite and direct pecuniary benefit to your business associates.

The Ethics Commission has recognized that a public official or employee will develop working relationships by cooperating with other public officials and employees while performing his official duties. R.C. 102.03(D) prohibits a public official or employee who engages in private outside employment or business activity from using relationships developed while performing his public duties to secure a favorable decision or action by another public official or employee regarding his private interests or the interests of his business associates. Adv. Op. 96-004.

As a person appointed to a county elected office, you have access to other county officials and employees which is unique to that enjoyed by attorneys who do not serve in elective office. R.C. 102.03(D) prohibits you from using your unique position and access, as a appointed county auditor, and your working relationship with judges, staff of the office of the county public defender, and other public officers and employees, to affect their selection and approval of your law partners as court-appointed counsel or the setting of their compensation and expenses. You are prohibited from formally and informally recommending or lobbying for your law partners, and from taking any other formal or informal action to persuade county officials and employees to select your law partners as court-appointed counsel.

Conclusion

As discussed more fully above, the Commission concludes that the Ohio Ethics Law and related statutes do not absolutely prohibit you from retaining your partnership in the law firm, or from practicing as a sole practitioner, while serving as county auditor. The laws do, however, impose serious limitations on the nature and extent of your practice within Delaware County. In addition, the prohibitions imposed upon you do not preclude your law partners from serving as court-appointed public defenders within Delaware County while you serve as county auditor.

David A. Yost
May 7, 1999
Page 13

The laws do, however, prohibit you from using your working relationship with judges and other public officers and employees to affect, formally or informally, their selection of your law partners as court-appointed counsel or the setting of your partner's compensation and expenses.

This informal advisory opinion was approved by the Ethics Commission at its meeting on May 7, 1999. The opinion is based on the facts presented and 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, please feel free to contact this Office again.

Very truly yours,



John Rawski
Staff Attorney