

OHIO ETHICS COMMISSION



Santiago Feliciano, Jr.
Commission Chair

David E. Freel
Executive Director

8 East Long Street, 10th Floor
Columbus, Ohio 43215
Telephone: (614) 466-7090
Fax: (614) 466-8368

Website: <http://www.ethics.state.oh.us>

July 20, 1999

Informal Opinion 1999-INF-0720

Michael C. Mentel, Esq.
Blaugrund, Herbert & Martin

Dear Mr. Mentel:

In a letter received by the Ohio Ethics Commission on June 2, 1999, you asked whether the Ohio Ethics Law and related statutes prohibit you, as a Columbus city council member, from participating in any matters that a residential developer, who is a client of your law firm, may bring before Columbus city council. You have explained that, when the developer appears before Columbus city council, it is represented by a law firm not affiliated or associated with your law firm.

As explained more fully below, the Ohio Ethics Law and related statutes do not generally prohibit you, as a Columbus city council member, from participating in a matter pending before Columbus city council that is brought by a party who is a client of your law firm but is not represented by your law firm on the matter before council. However, if the relationship between you and that client is such that your independence of judgment could be impaired, as described below, you are prohibited from participating in the matter. Finally, the Ethics Law does prohibit you from disclosing any confidential information that you acquired in your city council position to your law firm, or to any other person, and from using such confidential information, without appropriate authorization.

Facts

You stated that you were appointed to Columbus city council on January 11, 1999, and that you serve on several committees including the Development Committee and the Zoning Committee. You also stated that you are employed by a local law firm, Blaugrund, Herbert & Martin (BH&M), and that you began your employment with BH&M on April 1, 1999. You stated that another attorney at BH&M represents a residential developer on matters before the City of Dublin, Ohio, and in Union County, Ohio. In a conversation with Commission staff, you stated that you receive no portion of the fees that the developer pays to BH&M for the representation. You stated that the developer was a client of BH&M prior to your employment.

You have also explained that another law firm represents the developer in all matters before Columbus city council. You indicated that the law firm that represents the developer before Columbus city council is not affiliated with, nor does it have any business relationship with, BH&M. You also indicated that BH&M does not receive any compensation or fees with regard to any matters in which the developer is represented by the other law firm.

Conflict of Interest Prohibition—R.C. 102.03(D)

You have asked whether the Ohio Ethics Law and related statutes prohibit you from participating in matters that arise before city council where a party to the matter is a client of your firm, but your firm does not represent the party on the specific matter before city council. Your question raises issues under Division (D) of Section 102.03 of the Ohio Revised Code, which provides as follows:

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.

The Commission has stated that R.C. 102.03(D) generally prohibits a public official, including a city council member, from participating in matters that affect the interests of any party with whom the official has a close relationship. For example, a city council member is prohibited from participating in matters that affect the interests of a family member or a business associate. See Adv. Op. No. 98-002 (family member) and Adv. Op. No. 88-005 (business associate.) The Commission has concluded that the public official's objectivity and independence of judgment could be impaired if he were to participate in matters that affect the interests of parties with whom he has close family, economic, or fiduciary relationships. Adv. Op. No. 97-002.

In 1990, the Commission was asked whether this restriction would prohibit a city council member who was employed by a private law firm from voting on matters that affect the interests of clients of his law firm. In response to the question, the Commission rendered Advisory Opinion No. 90-008. In your letter to the Commission, you stated that you have reviewed this opinion.

In Advisory Opinion No. 90-008, the Commission concluded that R.C. 102.03(D) prohibits a city council member, who is an employee of a law firm, from participating in matters pending before council that involve the interests of his employer. The Commission stated that the council member was prohibited from participating in any matter where his law firm was representing a client before city council, or where his law firm was paid to provide legal services on the matter, even if the party was represented before council by another law firm. Id.

The Commission went on to state that R.C. 102.03(D) does not prohibit a city council member from participating in a matter pending before city council that affects a party who is a client of the council member's law firm if the law firm is not representing the client before council and has not provided legal services on the matter before council. Id. However, the Commission advised that, if the relationship between the council member and the client is such that the council member's independence of judgment could be impaired, the council member is prohibited from participating. Id. The Commission explained this prohibition in more detail as follows:

Generally, the mere fact that a party is also a client of an official's law firm would not be sufficient to require the official to abstain from matters involving the client's interests. There may be some circumstances, however, where R.C. 102.03(D) would

prohibit a public official from acting on matters involving a client. The facts and circumstances of each case must be examined to determine if the nature of the relationship between the public official and the client is such that his objectivity and independence of judgment could be impaired. See Advisory Opinion No. 88-004. For example, if the public official himself is currently representing a client on other matters, he would be prohibited, by R.C. 102.03(D), from acting in his official capacity on any matter which could benefit the client. In addition, you should note that any action you take with respect to your law firm's clients may create an appearance of impropriety because of the relationship between your law firm and its clients. Id.

Applying the conclusions in Advisory Opinion No. 90-008 to your situation, you are not generally prohibited from voting, or otherwise participating, in a matter pending before city council that is brought by a party who is a client of your law firm but is not represented by your law firm on the matter before council. Id. You would be prohibited, however, from participating in a matter pending before city council if your law firm is representing a party on that specific matter pending before council, or if an employee or partner of your law firm has provided consultation and advice to the party that is presenting the matter to council. Id. You would also be prohibited from acting on matters before city council that affect a party who is your client, even if the party is represented before council by another attorney. Id.

Although you have not presented this situation, you should also note that you would be prohibited from receiving a distributive share of client fees earned by members of your law firm for representing a client on matters pending before city council or for providing consultation and advice to a party that is presenting a matter before council, even if you do not participate in the matter. Id. Finally, you would not generally be prohibited from participating in a matter pending before city council in which a client of your firm has a contingent interest, unless your law firm's receipt of client fees is dependent upon council's determination of the matter, or unless your independence of judgment could otherwise be impaired. Id.

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

Your question also implicates Division (B) of Section 102.03 of the Revised Code, which reads:

No present or former public official or employee shall disclose or use, without appropriate authorization, any information acquired by the public official or employee in the course of the public official's or employee's official duties that is confidential because of statutory provisions, or that has been clearly designated to the public official or employee as confidential when that confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary to the proper conduct of government business.

Pursuant to this section, you are prohibited from disclosing confidential information that you acquired in your position as a city council member to your law firm, or to any other person, and from using such information, without appropriate authorization. See Adv. Op. No. 89-006. No time

Michael C. Mentel
July 20, 1999
Page 4

limitation exists for this prohibition. Adv. Op. No. 88-009. It is effective while you serve in a public position and after you leave public service. Id.

Conclusion

As explained more fully above, the Ohio Ethics Law and related statutes do not generally prohibit you, as a Columbus city council member, from participating in a matter pending before Columbus city council that is brought by a party who is a client of your law firm but is not represented by your law firm on the matter before council. However, if the relationship between you and that client is such that your independence of judgment could be impaired, as described above, you are prohibited from participating in the matter. Finally, the Ethics Law does prohibit you from disclosing any confidential information that you acquired in your city council position to your law firm, or to any other person, and from using such confidential information, without appropriate authorization.

You should be aware that your question might also raise issues concerning the professional conduct of attorneys under the Code of Professional Responsibility. For example, DR 8-101 prohibits a lawyer who holds public office from using his public position to obtain, or attempt to obtain, a special advantage in legislative matters for himself or for a client under circumstances where he knows or it is obvious that such action is not in the public interest and from using his public position to influence, or attempt to influence, a tribunal to act in favor of himself or of a client. In addition, DR 9-101 instructs a lawyer to avoid even the appearance of impropriety by not accepting private employment in a matter in which he had substantial responsibility while he was a public employee. These issues are not within the jurisdiction of the Ethics Commission and should be referred to the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court.

The Commission commends your timely request for advice and encourages public servants to seek advice from the Commission before they act. Public servants, who are also attorneys, must take extra caution when confronted with situations in which they have duties to the public, whose interest may differ from the interests of their clients or law firms. In these situations, attorneys must be ever mindful of, and strictly adhere to, restrictions of the kind discussed above.

This informal opinion was approved by the Commission at its meeting on June 29, 1999. It represents the views of the undersigned, based on the precedent of the Commission and 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 other questions, please do not hesitate to contact this Office again.

Sincerely,



Laura Evans Nolan
Staff Attorney