

OHIO ETHICS COMMISSION

Merom Brachman
Commission Chair

David E. Freel
Executive Director



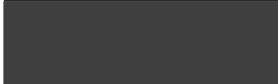
8 East Long Street, 10th Floor
Columbus, Ohio 43215
Telephone: (614) 466-7090
Fax: (614) 466-8368

Web site: <http://www.ethics.state.oh.us>

June 8, 2001

Informal Opinion 2001-INF-0608

Gerald M. Miller
Miller Valentine Group



Dear Mr. Miller:

In a letter received by the Ohio Ethics Commission on March 8, 2001, you have requested an informal advisory opinion from the Commission regarding your private business affiliations and your membership on the Ohio Board of Regents. You explain that you have various interests in companies that are affiliated with the Miller Valentine Group (MVG), and that MVG and its affiliates are involved in public university construction projects.

Opinion Summary

As a member of the Board of Regents, you are prohibited from having a financial or fiduciary interest in a public contract entered into by or for the use of a public college or university, including a contract for the provision of construction services on off-campus properties where a university foundation provides funds for the construction project and where the construction project is conducted with leadership or cooperation from the public college or university, unless you can meet an exception to the public contract prohibition as discussed herein. You are also prohibited, during your term of office and for one year thereafter, from profiting from a contract that was awarded by the Board of Regents, unless the contract was competitively bid and was awarded to the party that submitted the lowest and best bid.

You are prohibited from formally or informally lobbying, or otherwise using your authority or influence as a public official, to secure any contract for MVG or its affiliates. Finally, you are prohibited from using your public position or authority in any other way to secure a benefit for MVG or its affiliates, or from soliciting or accepting a personal financial benefit from a contract between MVG and a public college or university or university foundation. Therefore, regardless of whether you can meet an exception to the public contract prohibition as discussed herein, you must remove yourself from participation in the profits of any MVG project where construction services are provided by MVG for the use or benefit of a public college or university, including any construction project involving off-campus properties where a university foundation provides funding for the construction project and where the construction project is conducted with leadership or cooperation from the public college or university.

Gerald M. Miller

June 8, 2001

Page 2

Facts

In your letter to the Commission, you explain that you are a member of the Ohio Board of Regents. You also explain that you and your spouse are shareholders in Miller Valentine Construction, Inc. (MVC) and Miller Valentine Realty, Inc. (MVR), both of which are affiliated with MVG. You further explain that you and your children, via a family limited liability company, own interest in Miller Valentine Partners, LTD (MVPLTD), which is another affiliate of MVG. You state that you serve as chairman of the MVPLTD Policy Committee. You also state, however, that you have recently asked the members to replace you in this position.

You state that MVC currently is, or recently has, engaged in design-build construction in Ohio, Kentucky, Indiana, Arizona, South Carolina, Florida, and Hawaii. You also explain that several of Ohio's public four-year universities, or their foundations, through third party referrals such as architects and real estate brokers, have contacted MVC for potential participation in either requests for proposals or bids for projects located on and off campuses.

You state that you have not been contacted directly by any employees or officers of universities. You explain that upon hearing of these contacts and after discussion with Kristina Frost, Vice Chancellor for Operations at the Ohio Board of Regents, you instructed MVG's financial office to remove you from participation in the profits of any state supported or assisted university-related project. You also note that you have asked Miller Valentine personnel to exclude you from discussions regarding participation in Ohio higher education projects.

You explain that projects that focus on the redevelopment of off-campus properties are generally completed without state funds but are done with cooperation and often leadership from the university. You state that your concern, should MVG receive an award of work on any of these projects, is the appearance of a conflict or the appearance of impropriety.

You explain that you have limited the opportunity for conflict to arise by removing yourself from project discussion and participation in project profits. You also explain that you are seeking an advisory opinion from the Ethics Commission to assist you in formulating steps to avoid even the appearance of impropriety.

You should note that, in addition to implicating conflict of interest provisions of the Ohio Ethics Law, the situation you have presented implicates several public contract provisions of the Ethics Law and related statutes. Before addressing the application of the conflict of interest provisions to your question, this advisory opinion will address the application of the public contract provisions.

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

R.C. 2921.42(A)(4) is applicable to the situation you have described. R.C. 2921.42(A)(4) 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.

The term "public official" is defined in R.C. 2921.01(A), for purposes of R.C. 2921.42, to include "any elected or appointed officer, or employee, or agent of . . . any political subdivision" of the state.

Here, the issue is whether a member of the Ohio Board of Regents who is appointed by the Governor is an "appointed officer . . . of the state" for purposes of R.C. 2921.42.

Under Ohio law, a person who holds an "office" is an "officer." The Ethics Commission, in Advisory Opinions No. 74-007 and 75-004, recognized several factors that established a test to determine whether one is "appointed to an office." These factors are whether the person: (1) is appointed; (2) has a title; (3) exercises a function of government concerning the public; (4) exercises the sovereign power of government; and (5) is not subject to a contract of employment. The Commission explained "sovereign power" in Advisory Opinion No. 77-004:

Sovereign power includes the exercise of a duty entrusted to one by virtue of statute or some other public authority, a duty that is not merely clerical, but that involves discretionary, decision-making qualities.

The Commission quoted from the Ohio Supreme Court case of State ex rel. Landis v. Butler, 95 Ohio St. 157 (1917), in Advisory Opinion No. 85-005, as follows:

If specific statutory and independent duties are imposed upon an appointee in relation to the exercise of the police powers of the state, if the appointee is invested with the independent power in the disposition of public property or with the power to incur financial obligations upon the part of the county or state, if he is empowered to act in those multitudinous cases involving business or political dealings between individuals and the public, wherein the latter must necessarily act through an official agency, then such functions are a part of the sovereignty of the state.

The majority of the powers and duties of the Ohio Board of Regents are set forth in R.C. 3333.04. R.C. 3333.04 provides the Board of Regents with several discretionary powers. While most of these powers are advisory, some powers are independent and directive. See R.C. 3333.04(N) (the Board of Regents shall "[a]pprove or disapprove all new degrees and new degree programs at all state colleges, universities, and other state-assisted institutions of higher education"); R.C. 3333.04(T) (the Board of Regents shall "administer contracts under sections 3702.74 and 3702.75 of the Revised Code in accordance with rules adopted by the director of health under section 3702.79 of the Revised Code"); and R.C. 3333.12(B) (the Board of Regents shall "establish and administer an instructional grant program"). Based on the Board of Regents' discretionary independent and directive authority, a member of the Ohio Board of Regents

Gerald M. Miller

June 8, 2001

Page 4

exercises sovereign power and is an appointed officer of the State. As such, a member of the Board of Regents is a "public official" subject to the prohibitions of R.C. 2921.42.

The term "public contract" is defined in R.C. 2921.42(G)(1)(a). Any contract for the purchase or acquisition of property or services by or for the use of a public college or university, and any contract for the design, construction, alteration, repair, or maintenance of property of a public college or university would be a "public contract." It is important to emphasize that a contract for the use of a public college or university would be a "public contract" as that term is defined by R.C. 2921.42(G)(1)(a). Therefore, a contract for the purchase or acquisition of construction services on off-campus properties would be a public contract where a university foundation provides funding for the construction project and the university takes a cooperative or leadership role in the construction project.

The Ethics Commission has stated that R.C. 2921.42(A)(4) prohibits a member of a public body from having a definite and direct pecuniary or fiduciary interest in the profits or benefits of a public contract entered into by a political subdivision or governmental agency or instrumentality with which he is "connected." The corporate entities of MVC, MVR, and MVPLTD, are all under the umbrella of the Miller Valentine Group (MVG). As a shareholder of MVC, MVR, and MVPLTD, you would have an interest in the contracts of MVG. See Adv. Op. No. 93-001. Also, as chairman of the MVPLTD Policy Committee, you have a fiduciary interest in the contracts of MVG. See Adv. Op. No. 96-005 (an officer or chief administrative official of a corporation has a fiduciary interest in the contracts of the corporation, and may have a pecuniary interest as well). The important question then, based on the situation you have described, is whether a member of the Board of Regents is connected with public colleges and universities for purposes of R.C. 2921.42(A)(4). Adv. Op. No. 87-002.

Connected With

In order to determine whether you, as a member of the Board of Regents, are connected with public colleges and universities, for purposes of the prohibition of R.C. 2921.42(A)(4), it is necessary to examine the relationship between the Ohio Board of Regents and public colleges and universities. As noted in Advisory Opinion No. 87-002, R.C. 2921.42 does not define the word "connected," as used in that statute, although "common usage indicates that to be 'connected with' something is to be related to, or associated with, that entity."

The Ohio Board of Regents has many ties to public colleges and universities. For instance, the Board recommends the nature of the programs, undergraduate, graduate, professional, state-financed research, and public services which should be offered by the state colleges universities, and other state-assisted institutions of higher education in order to utilize to the best advantage their facilities and personnel. R.C. 3333.04(E). The Board also conducts studies for the state colleges, universities, and other state-assisted institutions of higher education to assist them in making the best and most efficient use of their existing facilities and personnel. R.C. 3333.04(H). The Board reviews the appropriation requests of the public community colleges and the state colleges and universities and submits, to the Office of Budget and Management and to the chairpersons of the finance committees of the House of Representatives

Gerald M. Miller

June 8, 2001

Page 5

and of the Senate, its recommendations in regard to the biennial higher education appropriation for the state, including appropriations for the individual state colleges and universities and public community colleges. R.C. 3333.04(J). Finally, the Board establishes and administers an instructional grant program for individuals attending accredited institutions of higher learning in the State. See R.C. 3333.12. Based on the many ties between the Board of Regents and public colleges and universities as enumerated herein, and as further enumerated in R.C. 333.04 generally, a member of the Ohio Board of Regents is "connected with" Ohio public colleges and universities. Therefore, as a member of the Board of Regents, you are prohibited from having a financial or fiduciary interest in a public contract entered into by or for the use of a public college or university unless, as discussed below, you can meet an exception to the public contract prohibition.

In your letter to the Ethics Commission, you state that you have instructed the financial office of MVG "to remove (you) from participation in the profits of any state supported or assisted university related project." You have included a memorandum from the Partnership Secretary at MVG stating that both you and your family corporation will not participate in any economic benefits from business between MVG and State of Ohio institutes of higher education. Based on the information that you have provided, it is clear that you will not have a financial interest in any business between MVG and Ohio colleges and universities. You should be aware, however, that R.C. 2921.42(A)(4) also prohibits you from having a financial interest in a construction project in which MVG is involved and which is fully or partially funded by a university foundation, or which is otherwise conducted by or for the use of a public college or university unless you can meet an exception to the public contract prohibition. Also, R.C. 2921.42(A)(4) prohibits you from having a fiduciary interest in a construction project that is conducted by or for the use of a public college or university unless you can meet an exception to the public contract prohibition. For instance, you state that you are the chairman of the MVPLTD Policy Committee and that you have asked the members of the MVPLTD Policy Committee to find someone to replace you in that position. If you were to serve as chairman of the MVPLTD Policy Committee while MVG provides services by or for the use of a public college or university, you would have a prohibited fiduciary interest in a public contract.

Exception Provided by R.C. 2921.42(C)

R.C. 2921.42(C) provides a four-part exception to the restriction in R.C. 2921.42(A)(4), which provides:

- (C) This section does not apply to a public contract in which a public official, member of his family, or one of his business associates has an interest, when all of the following apply:
 - (1) The subject of the public contract is necessary supplies or services for the political subdivision or governmental agency or instrumentality involved;
 - (2) The supplies or services are unobtainable elsewhere for the same or lower cost, or are being furnished to the political subdivision or governmental

agency or instrumentality as part of a continuing course of dealing established prior to the public official's becoming associated with the political subdivision or governmental agency or instrumentality involved;

- (3) The treatment accorded the political subdivision or governmental agency or instrumentality is either preferential to or the same as that accorded other customers or clients in similar transactions;
- (4) The entire transaction is conducted at arm's length, with full knowledge by the political subdivision or governmental agency or instrumentality involved, of the interest of the public official, member of his family, or business associate, and the public official takes no part in the deliberations or decision of the political subdivision or governmental agency or instrumentality with respect to the public contract.

Each of the provisions in Division (C) is a question of fact which, when applied to the circumstances of the individual case, will determine whether a particular transaction fits within the exception. Adv. Ops. No. 80-003 and 88-008. The criteria of Division (C) are strictly construed against the public official, and the official must show compliance with all four requirements in the exception. Adv. Ops. No. 83-004, 84-011, and 88-008.

Continuing Course of Dealing—R.C. 2921.42(C)(2)

One means of meeting the criteria of R.C. 2921.42(C)(2) is by demonstrating that the services under the public contract are being furnished as part of a continuing course of dealing established prior to an individual becoming associated with the public agency. You have stated that the contracts between Ohio public colleges and universities and MVG have been "recent." You were appointed to the Board of Regents in 1996. Therefore, it appears that you would be unable to demonstrate that you can meet the "continuing course of dealing" requirement in R.C. 2921.42(C)(2).

You may be able to meet the exception in R.C. 2921.42(C)(2) by showing that the services that MVG or its affiliated companies provide to colleges or universities under any existing contracts are unobtainable elsewhere for the same or lower cost. Competitive bidding, whereby MVG or one of its affiliates submits the lowest bid, is one indication that this requirement has been met, but it is not determinative. Adv. Op. No. 86-002. Other factors that must be considered include the availability and adequacy of notice to potential bidders, the openness and fairness of the bidding process; and the conditions of the market. Adv. Ops. No. 83-004 and 88-001.

Even if the criteria of Division (C)(2) can be met, the other three criteria of Division (C) must also be met.

Other Requirements of R.C. 2921.42(C)

In order to have an interest in a college or university contract, you must, in addition to meeting the requirements of Division (C)(2) as set forth above, meet each of the other requirements of R.C. 2921.42(C). R.C. 2921.42(C)(1) requires that the services provided by MVG or its affiliates to the colleges or universities are necessary services. Division (C)(3) requires that the treatment provided to the colleges or universities by MVG or its affiliates is as good as or better than the treatment provided by MVG or its affiliates to any other party. Finally, Division (C)(4) requires that the transaction be conducted at arm's length, that the Board of Regents has full knowledge of your interest in the college or university contracts, and that you take no part in the deliberations and decision of the Board of Regents with respect to the contracts. See also R.C. 2921.42(A)(1), discussed below.

Profiting from a University Contract—R.C. 2921.42(A)(3)

You should also be aware of the prohibition imposed by R.C. 2921.42(A)(3), which provides that no public official shall knowingly:

During his term of office or within one year thereafter, occupy any position of profit in the prosecution of a public contract authorized by him or by a legislative body, commission, or board of which he was a member at the time of authorization, unless the contract was let by competitive bidding to the lowest and best bidder.

As discussed above, a member of the Board of Regents is a "public official" subject to the prohibitions of R.C. 2921.42. As is also discussed above, a contract for the design of public property, or the acquisition of property or services by a public college or university, is a public contract. R.C. 2921.42(A)(3) prohibits you from profiting from a public contract authorized by you, or by the Board of Regents while you are a member thereof.

A public contract is considered to be authorized by an official or board if the contract could not have been awarded without the approval of the official, the public position in which he serves, or the board of which he is a member. See Adv. Op. No. 87-004.

R.C. 2921.42(A)(3) prohibits a public official, during his term of office and for one year thereafter, from profiting from a contract that was awarded by his board. Based on a review of the statutory authority of the Board of Regents, it does not appear that the board has the authority to approve public college or university construction projects. If the Board of Regents does not approve such contracts, ~~R.C. 2921.42(A)(3)~~ would not limit your involvement with MVG. However, as discussed above, R.C. 2921.42(A)(4) prohibits you from having a financial or fiduciary interest in a public college or university contract unless you can meet each of the four requirements of R.C. 2921.42(C).

Using Your Position to Secure Authorization of a University Contract—R.C. 2921.42(A)(1)

Even where you can meet an exception to R.C. 2921.42(A)(4), such that you would not be prohibited from having a prohibited interest in a public college or university contract, you must adhere to the restriction imposed by 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.

As discussed above, it appears that the Board of Regents does not have the statutory authority to authorize public college or university construction contracts. R.C. 2921.42(A)(1) also prohibits you, however, from “employ[ing] the authority or influence of [your] office to secure authorization” of any public contract in which you, a member of your family, or any of your business associates has an interest.

In your letter to the Commission, you explain that you and members of your family have shareholder interests in companies affiliated with MVG. Therefore, you are prohibited from formally or informally lobbying college or university officials regarding MVG, and from otherwise using your authority or influence as a public official to secure any contract for MVG or its affiliates. Adv. Op. No. 89-008. See also R.C. 102.03(D) (prohibiting a public official or employee from using his public position to secure anything of value that could impair his objectivity). You are prohibited, for example, from recommending MVG’s services or products, and discussing MVG’s contracts with other state officials and employees.

Using Your Position to Secure Certain Things of Value—R.C. 102.03(D)

As you note in your letter, Ohio’s conflict of interest restrictions, set forth in R.C. 102.03(D), are also applicable to the situation you have presented. R.C. 102.03(D) provides the following:

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.

For purposes of the prohibition of R.C. 102.03(D), “public official” is defined as “any person who is elected or appointed to an office or is an employee of any public agency.” R.C. 102.01(B). In Advisory Opinion No. 75-022, the Commission held that a member of the Ohio Board of Regents is not a public official as defined in R.C. 102.01(B). At the time the Commission issued Advisory Opinion No. 75-022, however, R.C. 102.01(B) defined public official as “any person who is elected or appointed to an elective office or employed by any public agency” (emphasis added). The current version of R.C. 102.01(B) defines public official

as "any person who is elected or appointed to an office or is an employee of any public agency." Therefore, an individual appointed to a non-elective office may be a public official as that term is currently defined in R.C. 102.01(B). As discussed above, a member of the Ohio Board of Regents is appointed to an office of the state, and, therefore, the board member is subject to the prohibitions of R.C. 102.03.

R.C. 102.03(D) does not speak in terms of a public official's or employee's "interest," but rather prohibits a public official or employee from taking any action, formally or informally, to secure a thing of value if the thing of value could manifest a substantial and improper influence upon the public official or employee with respect to that person's duties. See Adv. Ops. No. 88-004 and 91-004. The Ethics Commission has held that a determination of whether a thing of value could manifest a substantial and improper influence upon a public official or employee with respect to that person's duties is dependent upon the facts and circumstances of each individual situation. See Adv. Ops. No. 87-008, 88-004, and 91-004.

A matter that affects the personal financial interests of a public official or employee would generally be of such a character as to manifest an improper influence upon him with respect to his duties. See Adv. Ops. No. 88-004 and 90-003. However, in order for R.C. 102.03(D) to prohibit a public official or employee from participating in a matter that would secure a thing of value for himself or for some individual or entity with whom or which he has an affiliation, the thing of value must also be of a "substantial" nature. See Adv. Ops. No. 86-011 and 92-014. The word "substantial" means "of or having substance, real, actual, true; not imaginary; of considerable worth or value; important." Adv. Op. No. 89-014 (quoting Adv. Ops. No. 75-014 and 76-005).

R.C. 102.03(D) and (E) generally prohibit a public official or employee from accepting, soliciting, or using his official authority or influence to secure a substantial thing of value from parties that are regulated by, doing business or seeking to do business with, or interested in matters before, the agency with which he serves. See Adv. Ops. No. 86-011 and 88-002. Therefore, R.C. 102.03(D) and (E) would generally prohibit you from soliciting or accepting a personal financial benefit from a contract between MVG or its affiliates and a public college or university.

As set forth above, you have stated in your letter to the Ethics Commission that you have instructed the financial office of MVG "to remove (you) from participation in the profits of any state supported or assisted university related project." You have included a memorandum from the Partnership Secretary at MVG stating that both you and your family corporation will not participate in any economic benefits from business between MVG and State of Ohio institutes of higher education. Based on the information that you have provided, it is clear that you will not receive anything of value from any business between MVG and Ohio colleges and universities. You should be aware, however, that R.C. 102.03(E) requires that you also remove yourself from participation in the profits of a construction project in which MVG is involved and which is fully or partially funded by a university foundation, or which is otherwise conducted by or for the use of a public college or university.

General Restrictions on Private Outside Business Activities

You should be aware that, in Advisory Opinion No. 96-004, the Ethics Commission identified general restrictions that apply to all public officials and employees who engage in private outside business activities. The Commission stated in Advisory Opinion No. 96-004 that R.C. 102.03(D) prohibits a public official or employee who engages in private outside business activity from:

- (1) using public time, facilities, personnel, or resources in conducting a private business or while engaging in private outside employment including conducting demonstrations for clients using public equipment.
- (2) using his official title or identification on private business cards or other written materials or appearing in uniform while soliciting business or conducting demonstrations for clients;
- (3) using his relationship with other public officials and employees to secure a favorable decision or action by the other officials or employees regarding his private interests;
- (4) discussing, deliberating, or voting on any matter involving his private business, including recommending his outside employer's or business's services to his own public agency;
- (5) receiving fees for providing services rendered on projects that he has recommended in his official capacity;
- (6) participating in decisions or recommendations regarding his competitors; and;
- (7) using his public position or authority in any other way to secure a benefit for his outside employer or private business.

The Commission has established these general limitations on the conduct of a public official or employee who wishes to engage in a private business. The application of these limitations is dependent on the facts and circumstances of each individual situation. See generally Adv. Ops. No. 77-003, 86-007, and 92-009. Because these companies with which you are affiliated are doing business with Ohio colleges and universities, you must be very careful to comply with these requirements in R.C. 102.03(D) and (E).

Appearances of Impropriety

A public official is a "fiduciary and must avoid even the appearance of impropriety, which can threaten to 'erode public confidence' in government, creating a cynicism that can potentially 'strike at the heart of our system of representative government.'" Kathryn L.

Saurack, *The Revolving Door: An Analysis of Post-Government Employment Restrictions on Foreign Representation*, 14 J. L. & Politics 383, 390 (Spring 1998), citing Michael H. Chang, *Protecting the Appearance of Propriety: The Policies Underlying the One-Year Ban on Post-Congressional Lobbying Employment*, 5-Wtr Kan. J.L. & Pub. Pol'y 121, 122 (1996). Based on your duty to serve the public as a member of the Board of Regents, and the concern you noted in your letter about the appearance of impropriety should MVG work on any university-related projects, this advisory opinion will now turn to a discussion of the potential appearances of impropriety that may result if MVG or any affiliated entity provides construction services to, or for the use of, any Ohio public colleges and universities.

In response to the concern that you have properly noted, even if you comply with all requirements of the Ohio Ethics Law described above, there may still be an appearance of impropriety if a company with which you are affiliated and which bears your name receives compensation for providing services to an Ohio public college or university. A fair and open bidding or selection process that considers all interested and qualified firms before choosing a firm best able to meet a college's or university's needs may assist in addressing any possible questions about the appearance of the transaction if a firm with which you are affiliated is chosen to provide the services.

Even where you meet an exception to the public contract prohibition and you properly remove yourself from participation in the profits of any university-related project, you should inform the Board of Regents of your interests in the various Miller Valentine entities and of any construction projects where Miller Valentine provides services to, or for the use of, any Ohio public college or university. This disclosure will enable the Board of Regents to monitor your involvement, as a member of the Board of Regents, in any matters before the Board that may have an impact on these construction projects. See *Schumacher v. City of Bozeman*, 174 Mont. 519, 529, 571 P.2d 1135, 1141 (1977) (a public officer must not place himself in a situation of temptation to serve his own purposes, to the prejudice of those for whom the law authorizes him to act). This disclosure may also assist in mitigating potential appearances of impropriety. However, in no instance can you be fully insulated from public scrutiny and public perceptions regarding the propriety of any actions that you take regardless of whether you observe all of the restrictions imposed by the Ethics Law and related statutes and follow all of the steps enumerated herein to avoid the appearance of impropriety.

Finally, with regard to potential appearances of impropriety, you should be aware that, as a governmental entity, the Board of Regents has a legitimate governmental interest to avoid "actual or potential conflicts of interest as well as the appearance of impropriety" by its members. *Vana v. Maple Heights City Council* (1990), 54 Ohio St.3d 91, 92 (emphasis added). Therefore, the Board of Regents may impose limitations on the ability of entities affiliated with MVG to provide construction services to, or for the use of, Ohio public college and universities, even where you can meet an exception to the public contract prohibition and where you remove yourself from participation in the profits of any university-related project.

Conclusion

As discussed above, as a member of the Board of Regents, you are prohibited from having a financial or fiduciary interest in a public contract entered into by or for the use of a public college or university, including a contract for the provision of construction services on off-campus properties where a university foundation provides funds for the construction project and where the construction project is conducted with leadership or cooperation from the public college or university, unless you can meet an exception to the public contract prohibition as discussed herein. You are also prohibited, during your term of office and for one year thereafter, from profiting from a contract that was awarded by the Board of Regents, unless the contract was competitively bid and was awarded to the party that submitted the lowest and best bid.

You are prohibited from formally or informally lobbying, or otherwise using your authority or influence as a public official, to secure any contract for MVG or its affiliates. Finally, you are prohibited from using your public position or authority in any other way to secure a benefit for MVG or its affiliates, or from soliciting or accepting a personal financial benefit from a contract between MVG and a public college or university or university foundation. Therefore, regardless of whether you can meet an exception to the public contract prohibition as discussed herein, you must remove yourself from participation in the profits of any MVG project where construction services are provided by MVG for the use or benefit of a public college or university, including any construction project involving off-campus properties where a university foundation provides funding for the construction project and where the construction project is conducted with leadership or cooperation from the public college or university.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on May 10, 2001. 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 questions or desire additional information, please contact this Office again.

Sincerely,



David E. Freel
Executive Director