

OHIO ETHICS COMMISSION

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June 24, 2002

Informal Opinion 2002-INF-0624-2

The Honorable Doug White
President Pro Tempore
Ohio Senate

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Dear Senator White:

In a letter received by the Ohio Ethics Commission on April 22, 2002, you asked for an advisory opinion regarding the recent amendments to R.C. 175.03 enacted in Am. Sub. H.B. 524 (eff. June 28, 2002). The amendments involve the members of the Ohio Housing Finance Agency (OHFA) Board that represent the interests of multifamily housing development organizations. Specifically, you ask whether, in light of the amendments enacted in Am. Sub. H.B. 524, a Board member may participate in OHFA funds. You note that the language in Am. Sub. H.B. 524 evinces "the clear intent of the General Assembly to allow those who serve on the OHFA Board to be grantees of OHFA funds without creating a conflict of interest."

Brief Answer

Because of the amendment to R.C. 175.03(A), each of the two members of the OHFA Board who are appointed to represent multifamily housing interests must be "employed with" an organization that is active in the area of affordable housing development or management. Pursuant to R.C. 175.03(B)(3), a member of the OHFA Board who represents the interests of multi-family housing interests is not in violation of R.C. 102.03(D) and (E) or 2921.42(A) with respect to any contracts, grants, or loans issued by OHFA to the multi-family housing organization by which he is employed. In order for the exception in R.C. 175.03(B)(3) to apply, the contract must be for a loan, grant, or participation in a program administered or funded by OHFA and awarded pursuant to rules or guidelines adopted by OHFA, and the member must not participate in the discussion or vote on the contract if the contract would directly benefit the member, a family member, or a business associate.

OHFA Statutory Composition—R.C. 175.03

OHFA consists of eleven members. R.C. 175.03(A)(1). The director of commerce and the director of development, or their respective designees, are voting members of OHFA. Id. Nine members are appointed by the governor with the advice and consent of the senate. Id. Of

the appointed members, the law provides that at least one must have experience in each of the following areas: (1) residential housing construction; (2) residential housing mortgage lending, loan servicing, or brokering; (3) licensed residential housing brokerage business; and (4) the housing needs of senior citizens. Id. At least one board member must be from a background in labor representation in the construction industry. Id. At least one board member must represent each of the following interests: (1) nonprofit multifamily housing development corporations; and (2) for-profit multifamily housing development organizations. Id. Each appointee who represents a multifamily housing development currently must be "employed with" an organization that is active in the area of affordable housing development or management. Id. The remaining two members must be public members. Id.

Because they exercise the sovereign authority of the state of Ohio, members of the OHFA Board are public officials subject to Chapter 102. and Sections 2921.42 and 2921.43 of the Ohio Revised Code. In previous opinions, the Commission has concluded that R.C. 102.03(D) and (E), and R.C. 2921.42(A), prohibit members of the OHFA Board from having an interest in contracts, grants, and loans entered into by the Board. At the time the Ethics Commission issued its opinion, its conclusions applied to all members of the OHFA Board except any member who is a director, officer, employee, or owner of a lending institution, for whom R.C. 175.03(B) provided a comprehensive exception. However, those conclusions must be reexamined in light of Am. Sub. H.B. 524, which amended R.C. 175.03 to include an additional exception.

Amendment to R.C. 175.03

Am. Sub. H.B. 524 amended R.C. 175.03(B) to include the following provision:

- (3) The members of the agency representing multifamily housing interests are not in violation of division (A) of section 2921.42, division (D) of section 102.03, or division (E) of section 102.03 of the Revised Code in regard to a contract the agency enters into if both of the following apply:
 - (a) The contract is entered into for a loan, grant, or participation in a program administered or funded by the agency and the contract was awarded pursuant to rules or guidelines the agency adopted.
 - (b) The member does not participate in the discussion or vote on the contract if the contract secures a grant or loan that would directly benefit the member, a family member, or a business associate of the member.

It is clear, from this amendment, that the General Assembly intended that any nonprofit or for-profit multifamily housing development organization that is active in the area of affordable housing, and whose employee is appointed to the OHFA Board to represent the interests of nonprofit multifamily housing development corporations, or for-profit multifamily housing development organizations, would not be barred from participating in OHFA programs

solely as a result of the employee's services on the Board. R.C. 175.03(B)(3)(a) provides that Board members appointed to represent multifamily housing interests are not in violation of the public contract or conflict of interest provisions of the Ohio Ethics Law with regard to a contract entered into by OHFA within the parameters established by the exception.

In order to meet the exception, the contract must be for a loan, grant, or participation in a program administered or funded by OHFA. The contract must be awarded pursuant to rules or guidelines OHFA has adopted. Finally, the employee of the nonprofit multifamily housing development corporation, or for-profit multifamily housing development organization, who serves on the OHFA Board to represent multifamily housing interests, is prohibited from participating in any discussion or vote on the contract, grant, or loan that would directly benefit the member, a family member, or a business associate.

R.C. 175.03 does not define the terms "family member" or "business associate." However, R.C. 175.03(B)(3) exempts the OHFA Board members from the provisions of R.C. 2921.42, including R.C. 2921.42(A)(1), which uses similar terms. Therefore, it is reasonable to conclude that a public official's "family member" or "business associate," for purposes of R.C.175.03(B)(3)(c), is the same as a "member of his family" or "business associate," for purposes of R.C. 2921.42(A)(1).

The members of a public official's family include the official's parents, grandparents, children, grandchildren, spouse, and siblings. Adv. Ops. No. 80-001 and 97-004. Also included are any other persons related to the official by blood or by marriage who reside in the same household as the official. *Id.* A public official's business associate is any person or entity with whom of the official is engaged in an ongoing business endeavor. Adv. Op. No. 88-008. Included in the definition of business associate is any person or entity by whom the official is employed. Adv. Op. No. 89-008.

In order to meet the exception in R.C. 175.03(B)(3), an OHFA Board member who is appointed to the Board to represent multifamily housing interests must abstain from participating in any discussion or vote on any contract, grant, or loan that would directly benefit himself, and any contract, grant, or loan that would directly benefit a family member or business associate, even if it does not directly benefit the Board member. Therefore, an OHFA Board member who is appointed to the Board to represent multifamily housing interests is prohibited from participating in any discussion or vote on any contract, grant, or loan that would directly benefit the multifamily housing development corporation or organization by which he is employed. If an OHFA Board member who is appointed to represent multifamily housing interests should participate in any discussion or vote on any contract, grant, or loan that would directly benefit himself, his family members, or his business associates, including any employer, the exception set forth in R.C. 175.03(B)(3) would not apply.

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Conclusion

Because of the amendment to R.C. 175.03(A), each of the two members of the OHFA Board who are appointed to represent multifamily housing interests must be "employed with" an organization that is active in the area of affordable housing development or management. Pursuant to R.C. 175.03(B)(3), a member of the OHFA Board who represents the interests of multi-family housing interests is not in violation of R.C. 102.03(D) and (E) or 2921.42(A) with respect to any contracts, grants, or loans issued by OHFA to the multi-family housing organization by which he is employed. In order for the exception in R.C. 175.03(B)(3) to apply, the contract must be for a loan, grant, or participation in a program administered or funded by OHFA and awarded pursuant to rules or guidelines adopted by OHFA, and the member must not participate in the discussion or vote on the contract if the contract would directly benefit the member, a family member, or a business associate.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on June 13, 2002. This informal advisory opinion represents the views of the undersigned, based on the facts presented. It is limited to questions arising under Chapter 102., and Sections 2921.42 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 contact this Office again.

Sincerely,



Jennifer A. Hardin
Chief Advisory Attorney