

OHIO ETHICS COMMISSION

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David E. Freel, *Executive Director*

February 21, 2003

Informal Opinion 2003-INF-0221

Mary J. Kilroy
Board of Commissioners of Franklin County

Dear Ms. Kilroy:

In a letter that the Ethics Commission received on June 4, 2002, you ask whether the Ohio Ethics Law and related statutes prohibit you from participating, as a member of the Franklin County Board of Commissioners (Board), in matters that will affect a local collective bargaining unit in light of the fact that you are a partner in a law firm that represents another local collective bargaining unit that is a member of the same international and state organizations.

You state that you are a partner in the law firm of Handelman and Kilroy. You also state that the law firm represents Communication Workers of America (CWA) Local 4320. You further state that you anticipate collective bargaining issues coming before the Board that will pertain to CWA Local 4310. You state that the two Locals are unaffiliated despite their membership in the International CWA and the State Council of Ohio. You also state that the Locals have separate charters and officers and negotiate and approve their own contracts. You further state that Local 4320 does not represent any employees or bargaining units affiliated with Franklin County.

Brief Answer

As explained below, the affiliation of two Locals as members of the International CWA and the State Council of Ohio does not generally create a prohibited conflict of interest due to the relationship between Local 4310 and your law firm such that you are prohibited from participating, as a member of the Board, in issues involving Local 4310. However, in some specific circumstances, such as where the International CWA or the State Council of Ohio is directing the operations or actions of the Locals, and your law firm is representing, or providing legal advice to, one of the Locals in connection with the direction provided by the International or State Council, the relationship between the Locals with respect to the matter on which the International or State Council is providing direction is so close that you are prohibited from participating if that same matter should come before the Board.

General Conflict of Interest Provisions—R.C. 102.03(D) and (E)

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

- (D) No public official or employee shall use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.
- (E) No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

A "public official or employee" is defined for purposes of R.C. 102.03 to include any person who is elected or appointed to an office of a political subdivision. R.C. 102.01(B) and (C). A county commissioner is a public official for purposes of R.C. 102.03(D) and (E). Ohio Ethics Commission Advisory Opinion No. 88-003.

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 fall under the definition of "anything of value." Adv. Op. 89-016.

A thing of value is of an improper character for purposes of R.C. 102.03(D) and (E) whenever a public official or employee secures the thing of value 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 her official actions and decisions. Adv. Ops. No. 79-002 and 90-012. The Ethics Commission has explained that a public official or employee must exercise her duties without hindrance by any improper influence. Adv. Op. No. 89-010.

R.C. 102.03(D) prohibits a public official or employee from participating in matters that will benefit parties with whom she 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. 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 she use the authority or influence of her position to secure it. Adv. Ops. No. 86-011 and 89-006.

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 she 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.

Precedent—Public Official Associated With a Law Firm

In Advisory Opinion No. 89-016, the Ethics Commission determined that R.C. 102.03(D) prohibits a member of a public board or commission who is also a partner or associate in a private law firm from voting, discussing, participating in deliberations, or otherwise using his official position, formally or informally, with regard to matters pending before his public board or commission on which a member of his law firm is representing a client. The Ethics Commission reiterated this conclusion in Advisory Opinion No. 90-008, in which the Commission determined that R.C. 102.03(D) prohibits a city council member who is employed by a private law firm from participating in a matter pending before city council if an employee or partner of his law firm is representing a client on that matter pending before council. See also Adv Op. No. 86-004. The Ethics Commission also stated in Advisory Opinions No. 89-016 and 90-008 that R.C. 102.03(E) prohibits an official serving on a public board or commission from receiving a distributive share of client fees earned by an employee or partner of his law firm for representing a client on matters pending before his public board or commission.

Application of Precedent

In the instant situation, as stated above, Local 4320 is a client of the law firm in which you are a partner. But Local 4310, which will have matters pending before the Board, is not. However, as stated above, both Locals have membership in the International CWA and the State Council of Ohio. The issue is whether the affiliation of Locals 4320 and 4310 as members in the International CWA and the State Council of Ohio creates such a close economic or business relationship between Local 4310 and your law firm that your objectivity and independence of judgment could be impaired regarding matters that Local 4310 will have before the Board.

In *Aaron v. Ohio Bureau of Employment Services* (1998), 130 Ohio App.3d 376, the court addressed the independence of union locals that belong to an international labor organization. The issue was whether members of United Auto Workers (UAW) Local 1112 were eligible to receive unemployment benefits if their unemployment resulted from a strike by UAW Local 696 over local labor issues at a GM facility that supplied components to the facility that was represented by UAW Local 1112. The court determined that the members of UAW Local 1112 were eligible to receive unemployment benefits because they were not "directly interested" in the strike. The Court held:

A UAW membership hardly equates to a direct interest in every labor dispute which involves the UAW. If this were so, all UAW members would be "directly interested" in every local labor dispute, regardless of the circumstances. The International UAW, as an entity, does have an interest in local labor disputes.

However, that does not mean that UAW members in the aggregate necessarily have an interest in local labor disputes.

Aaron at 391.

As stated above, Local 4320 and 4310 have separate charters and officers and negotiate and approve their own contracts. Therefore, following the rationale of the court in *Aaron* that recognizes the independence of union locals in local collective bargaining issues, the affiliation of Local 4320 and 4310 as members in the International CWA and the State Council of Ohio does not, in and of itself, create such a close economic or business relationship between Local 4310 and your law firm that your objectivity and independence of judgment could be impaired regarding local collective bargaining issues that Local 4310 will have before the Board.

However, a situation could arise where the International CWA or the State Council of Ohio is directing the operations or actions of the Locals. In such a situation, all of the Locals, including Locals 4310 and 4320, would have be united, through their affiliation to the International CWA or the State Council, on those matters for which their directions or actions are directed by the International or the State Council. For example, if the International CWA were to mandate a particular course of action for all Locals in connection with the negotiation of contracts, the interests of Locals 4310 and 4320 would be allied, and the Locals would be united in carrying out that course of action. If your law firm were to represent Local 4320 on a matter in which the International or State Council has directed the operations or actions of the Local, and the same matter came before the Board, the relationship between the Locals through their affiliation to the International or State Council is so close that you would be prohibited from participating with respect to that matter.

Conclusion

As explained above, the affiliation of two Locals as members of the International CWA and the State Council of Ohio does not generally create a prohibited conflict of interest due to the relationship between Local 4310 and your law firm such that you are prohibited from participating, as a member of the Board, in issues involving Local 4310. However, in some specific circumstances, such as where the International CWA or the State Council of Ohio is directing the operations or actions of the Locals, and your law firm is representing, or providing legal advice to, one of the Locals in connection with the direction provided by the International or State Council, the relationship between the Locals with respect to the matter on which the International or State Council is providing direction is so close that you are prohibited from participating if that same matter should come before the Board.

As a final matter, your question may also raise issues concerning the professional conduct of attorneys under the Code of Professional Responsibility. These issues are not within the jurisdiction of the Ethics Commission, but should be referred to the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court.

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The Ohio Ethics Commission approved this informal advisory opinion at its meeting on February 21, 2003. The opinion is based on the facts presented and 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 questions or desire additional information, please contact this Office again.

Sincerely,

A handwritten signature in cursive script that reads "John Rawski".

John Rawski
Staff Attorney