

OHIO ETHICS COMMISSION

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David E. Freel, *Executive Director*

June 13, 2003

Informal Opinion 2003-INF-0613-2

Gene Esser
Summit County Engineer

Dear Mr. Esser:

The Ohio Ethics Commission received your request for an advisory opinion on May 5, 2003. In your letter, you ask whether the Ethics Law prohibits you, as the Summit County Engineer, from purchasing real property in the City of Twinsburg, Summit County, from a private owner at fair market value. You also ask whether the Ethics Law prohibits your spouse, who is the Mayor of the City of Twinsburg, from "marital involvement" in the purchase of the property. Finally, you ask whether the Ethics Law prohibits your spouse from participating by executing documents, in her official capacity as Mayor, in infrastructure improvements that uniformly benefit all parcels of real property served by the improvements including the parcel that you own.

Brief Answer

As set forth more fully below, the Ohio Ethics Law does not prohibit an elected official from purchasing, in the community he serves, real property from a private owner at fair market value. Further, the Ethics Law does not prohibit an elected official from having a marital interest in property purchase by her spouse in the community she serves. However, R.C. 102.03(D) and (E) prohibit your spouse from voting, discussing, deliberating, signing documents, or otherwise using the authority or influence of her position as Mayor, formally or informally, in matters involving infrastructure improvements that directly and specifically benefit parcels of real estate served by the improvements including a parcel you own.

Facts—Purchase of Property

Your first and second questions involve your purchase of real property in the City of Twinsburg, which is located in Summit County. You have explained that you and your spouse were married in the fall of 2002. Since that time, you have been looking for property in the City of Twinsburg, on which to build a new home, because your spouse is required to live within the City.

You have explained that you found a three-acre parcel of real property on an undeveloped fifty-acre tract within the City. In your letter, you stated that the parcel has been subdivided from the tract, and that the sale of the property has been completed. In a telephone conversation with Commission staff, you explained that the closing on the property was within a week of your request for the opinion.

Purchase of Property—R.C. 102.03(D) and (E)

Because the purchase of property you have described has already been completed, the Commission cannot provide you with an advisory opinion applying the law specifically to that purchase. The Commission can provide you with general information about the law as it applies to such a situation.

The Ohio Ethics Law generally prohibits a public official from soliciting, accepting, or using his public position in any way to secure anything of value for himself or for another party with whom he has a close family, economic, or business connection. R.C. 102.03(D) and (E). See Ohio Ethics Commission Advisory Opinions No. 88-004, 97-002, and 98-002. An elected official is a "public official" for purposes of these restrictions. The law does not, however, prohibit an elected official from purchasing real property in the community that he serves as an elected official, in the same manner and on the same terms as other citizens in the community.

Therefore, as long as an elected official has not used his position in any way to secure a lower price, more favorable terms, or other benefit related to the purchase of real property, that would be unavailable to other interested purchasers in the community, the Ethics law does not prohibit him from purchasing real property in the community he serves. Further, as long as she does not use her position in any way to secure a benefit for her spouse, the law does not prohibit an elected official from having an interest, as the spouse of the purchaser of property, in the purchase of real property within the community where she is an elected official.

Facts—Participating in Property Development Matters

You have explained that the three-acre parcel of real property you purchased was part of a fifty-acre tract. The remaining forty-seven acres of the tract have been sold to a developer. You and the developer paid the same dollar price per acre for the property each of you bought.

The developer is seeking authorization to improve the infrastructure of the remainder of the tract. The improvements would provide water and sewer services to lots formed by subdivision of that tract. The owners of nearby parcels, including the parcel you purchased, could tie into those water and sewer services, at their sole cost and expense. Connection of these services to subdivision lots or to individually owned parcels would provide equivalent benefits to the owners of each respective lot or parcel.

You have explained that infrastructure improvements require City Council's legislative approval. By legislative action, the city authorizes the developer to proceed with plans to improve the tract of land through the approval of construction plans, landscaping plans, storm, sanitary, and water easements, constructions agreements, and escrow agreements. The legislative action will also authorize the Mayor, on behalf of the City, to execute documents necessary for such improvements.

Your question is whether the Ethics Law prohibits the Mayor, in her official capacity and as authorized by City Council, from executing documents for infrastructure improvements that apply to all parcels in a fifty-acre tract served by the infrastructure improvements, and nearby parcels, when her spouse owns one of the parcels.

Participating in Matters Affecting Property—R.C. 102.03(D) and (E)

R.C. 102.03(D) and (E) apply directly to your question. R.C. 102.03(D) and (E) provide:

- (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.

R.C. 102.03(D) prohibits a public official or employee from using the authority or influence of her public position, formally or informally, in any matter that would render a particular and definite pecuniary benefit or detriment for a person with whom the official has a close family relationship, such as a spouse. See Ohio Ethics Commission Advisory Opinions No. 88-004 and 98-002. R.C. 102.03(E) prohibits a public official or employee from soliciting a particular and definite benefit for a person with whom the official has a close family relationship.

As the Mayor of Twinsburg, your spouse is a "public official or employee" subject to this restriction. R.C. 102.01(B) and (C); Adv. Op. No. 98-002. Accordingly, your spouse is prohibited, by R.C. 102.03(D), from voting, discussing, deliberating, signing documents, or otherwise using the authority or influence of her position as Mayor, formally or informally, with respect to any matter before the City that would provide a definite, pecuniary benefit or detriment to the property you own. Adv. Ops. No. 79-008, 88-004, and 92-013. R.C. 102.03(D) also prohibits the Mayor from participating, formally or informally, with respect to land use, zoning, or development matters before the City that affect land adjacent to or near your property, if the matters will result in a benefit or detriment to the value of your property.

In the situation you have described, the Mayor is prohibited from acting on matters that would directly affect your property and other parcels of property that are located adjacent to your property. Because the development you have described is adjacent to your property, the Mayor is prohibited from executing documents for infrastructure improvements, or taking any other action in her role as Mayor, that would affect the development. Therefore, the Mayor is prohibited from participating by executing documents, in her official capacity as Mayor, for infrastructure improvements that benefit parcels of real estate serviced by the improvements including a parcel you own.

The Mayor is also prohibited, by R.C. 102.03(D), from using the authority or influence of her position over employees or officials of the City, with respect to issues that affect property you own. R.C. 102.03(E) prohibits the Mayor from improperly soliciting any benefit to the value of property you own.

Uniform Benefit to Property

You have stated that your property will be affected in the same manner as all of the other properties in the fifty-acre tract, and other nearby parcels. The Commission has stated that R.C. 102.03(D) does not prohibit a public official from acting on a property matter that provides a uniform benefit to all or most property within the political subdivision she serves, including her property or her relative's property. Adv. Op. No. 88-004. In order to rely on Advisory Opinion No. 88-004, the Mayor would have to demonstrate that her decisions in a development matter will provide a uniform benefit to your property and all or most other property in the City. It is not sufficient that your property and some other properties in the City will be affected in a uniform manner.

The fifty-acre tract of property, and nearby parcels, that you have described are not all or most of the property within the City. Therefore, the Commission's holding in Advisory Opinion No. 88-004 does not apply to the situation you have described.

Conclusion

As set forth more fully above, the Ohio Ethics Law does not prohibit an elected official from purchasing, in the community he serves, real property from a private owner at fair market value. Further, the Ethics Law does not prohibit an elected official from having a marital interest in property purchase by her spouse in the community she serves. However, R.C. 102.03(D) and (E) prohibit your spouse from voting, discussing, deliberating, signing documents, or otherwise using the authority or influence of her position as Mayor, formally or informally, in matters involving infrastructure improvements that directly and specifically benefit parcels of real estate served by the improvements including a parcel you own.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on June 13, 2003. The Commission commends you for requesting guidance on behalf of the Administrator before any actions were taken that could be prohibited by law.

Engineer Gene Esser
June 13, 2003
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The opinion is 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 questions or desire additional information, please feel free to contact this Office again.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer A. Hardin". The signature is written in a cursive style with a large initial "J".

Jennifer A. Hardin
Chief Advisory Attorney