

OHIO ETHICS COMMISSION

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David E. Freel, *Executive Director*

August 25, 2006

Informal Opinion 2006-INF-0825-1

Mark Barbash


Dear Mr. Barbash:

In a letter received by the Ohio Ethics Commission on June 1, 2006, you have explained that you are the Director of Development for the City of Columbus. You are interested in applying for the position of Chief Executive Officer of the newly created Columbus-Franklin County Finance Authority ("finance port authority"). You have asked whether the Ohio Ethics Law and related statutes prohibit you from applying for the position and, if you are offered the position, from accepting it. The Ethics Commission commends you for seeking guidance before taking any action that could be prohibited by the law.

Facts

In your letter, you explained that the Franklin County Board of Commissioners and the Mayor of the City of Columbus established a study committee, of which you were a member, to evaluate a 2001 recommendation to launch an economic development authority. You explained that the committee concluded that Columbus needed an independent finance port authority and reaffirmed the 2001 recommendation.

You stated that, subsequently, the Mayor inquired about the possibility of you becoming the finance port authority's chief executive officer. Because of your interest in the position, you requested to be removed from any future actions, discussions, or decisions regarding the finance port authority. The project was then assigned to the Senior Advisor on Regional Affairs, who worked under the direction of the Mayor's office. You indicated that you have had no involvement in the new study commission since its recommendation.

The Revolving Door Prohibition—R.C. 102.03(A)

R.C. 102.03(A)(1), the “Revolving Door” prohibition of the Ohio Ethics Law, provides:

No present or former public official or employee shall, during public employment or service or for twelve months thereafter, represent a client or act in a representative capacity for any person on any matter in which the public official or employee personally participated as a public official or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion.

R.C. 102.03(A)(1) is designed to protect the public interest by prohibiting situations from arising where a former public official or employee “will engage in a conflict of interest or realize personal gain at public expense from the use of ‘inside’ information.” State v. Nipps, 66 Ohio App.2d 17, 21 (1979). Referring to the revolving door law, the Court in State v. Nipps held: “The state has a substantial and compelling interest to restrict unethical practices of its employees and public officials not only for the internal integrity of the administration of government, but also for the purpose of maintaining public confidence in state and local government.”

As an employee of the City, you are subject to the revolving door prohibition for twelve months after you leave your public position. R.C. 102.01(B) and (C). A “person,” for purposes of R.C. 102.03(A)(1), includes governmental agencies, and would include the finance port authority, and its program participants and funding recipients. R.C. 1.59(C) and Ohio Ethics Commission Advisory Opinions No. 82-002 and 89-003.

The term “represent” is defined in R.C. 102.03(A)(5) to include “any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person.” (Emphasis added.) Adv. Op. No. 86-001. The prohibition in R.C. 102.03(A)(1) applies to any “matter” in which you personally participated. The term “matter” is defined in R.C. 102.03(A)(5) to include “any case, proceeding, application, determination, issue, or question.” Adv. Op. No. 99-001.

R.C. 102.03(A) prohibits a public official or employee, during or for one year after public employment, from representing any person on a matter in which he personally participated, before any public agency, and not just before the agency with which he was previously employed. Adv. Ops. No. 86-001, 87-001, and 92-005. This would include the City, the County, the Ohio Department of Development, and any other public agency at the state or local level. “Personal participation” includes “decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion,” and includes supervision of other City officials and employees. Adv. Op. No. 91-009.

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R.C. 102.03(A)(1) prohibits you from representing the finance port authority before any public agency, including but not limited to the City and the County, on any development-related matters in which you personally participated as a City employee. Because the position of chief executive officer of the finance port authority is an outgrowth of, and would involve substantial activities that are closely related to, your existing authority as Director of Development for the City of Columbus, the Commission concludes that R.C. 102.03(A)(1) bars you from accepting the position of chief executive officer during the first twelve months after you leave your position with the City.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on August 22, 2006. 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 fluid and cursive, with the first name being the most prominent.

Jennifer A. Hardin
Chief Advisory Attorney