

OHIO ETHICS COMMISSION

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David E. Freel, *Executive Director*

November 30, 2007 Informal Opinion 2007-INF-1130-2

Marcia Kiesling
[REDACTED]

Dear Ms. Kiesling:

On August 13, 2007, the Ethics Commission received your request for an advisory opinion. In your letter, you explained that you currently serve on the Board of Health of the Stark County General Health District (board). At the time of your letter you were a candidate for North Canton City Council (council). According to information from the Stark County Board of Elections, you were elected to the council position. You asked if you may simultaneously serve as a board of health member and a council member.

North Canton is one of the political subdivisions in the Stark County Combined General Health District (district). You explained that North Canton pays annual fees to the district through property taxes that are passed through the annual budget. The Budget Commission determines the total amount of fees, and the Stark County Auditor's Office determines the amount each subdivision pays pursuant to R.C. 3709.08. Council members vote on the budget.

Brief Answer

As explained more fully below, R.C. 2921.42(A)(4) prohibits you from serving simultaneously as a member of both the board of health and the city council.

Public Contract Prohibitions—R.C. 2921.42(A)(4)

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 the public official is connected.

As a member of the board of health of a general health district, you are a "public official" subject to R.C. 2921.42(A)(4). See R.C. 3709.02. See also 1999 Att'y Gen. Op. No. 99-036. A city council member is also subject to the prohibitions of R.C. 2921.42. Ohio Ethics Commission Advisory Opinion No. 2000-02.

A "public contract" is defined to include "[t]he purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of the state, [or] any of its political subdivisions, or any agency or instrumentality of either." R.C. 2921.42(G)(1)(a). The purchase or acquisition of services by the county, the board of health, or the city is a public contract.

Each city forms its own health district. R.C. 3709.01. However, a city can enter into a contract with another city health district or a general health district for public health services. R.C. 3709.01 and 3709.08. You explained that North Canton has entered into a contract with the Stark County General Health District. When a city contracts with a general health district for public health services, the contract provides: (1) the amount of money or proportion of expenses to be paid by the city for the service and how it will be paid; (2) the amount and character of services to be given to the city; (3) the date on which the services will begin and the length of the contract. R.C. 3709.08. The contract between the City of North Canton and Stark County General Health District falls within the definition a "public contract," because the city is purchasing public health services from the general health district.

The determination of whether a public official has an interest in a public contract entered into by her political subdivision depends on the facts and circumstances of each particular situation. Adv. Ops. No. 84-009 and 89-006. An interest that is prohibited under Section 2921.42 must be definite and direct, and may be financial or fiduciary in nature. Adv. Ops. No. 81-008 and 89-004. See also North Canton Municipal Charter 6.01 (no elected officer of the city shall have any direct or indirect financial interest in any contract of the city). As a member of the board of the general health district, you have a fiduciary interest in contracts of the district. As a member of city council, you will have a fiduciary interest in contracts of the city.

As noted above, there is at least one contract between the city and the board of health, memorializing the union between the city and the board. There may be additional contracts between the two public agencies.¹ If you were to serve as a member of both the board of health and city council, you would have a prohibited fiduciary interest in these contracts. Because there is at least one public contract between the city and the health department, you are prohibited by R.C. 2921.42(A)(4) from serving both entities.²

¹ The Web site for the Stark County General Health District describes a storm water program (Phase II Storm Water) mandated by the Environmental Protection Agency under the Clean Water Act, where cities within the county, including North Canton, have contracted with the district to conduct a storm water discharge, detection, and elimination program.

² The Commission has explained that, in some situations, a public official can simultaneously serve as a member of another public body, even if there are contracts between the two agencies, if the official serves in his or her "official capacity." See Adv. Op. No. 99-004 (a member of a school district board of education can also serve as a member of a joint vocational board of education with which the district has a contract provided that the board member can meet the four factors showing he or she serves in an official capacity). If you have been appointed to the board as a representative of the city, please contact the Commission for further guidance.

Compatibility of Public Positions

You should also be aware that the Attorney General has ruled that the positions of member of a board of health of a general health district and member of village council are incompatible. See 1999 Att'y Gen. Op. No. 99-036. The Attorney General's ruling was based on the application of R.C. 731.12, which prohibits a member of a legislative authority of a village from holding any other public office. There is a similar statutory restriction for city officers set forth in R.C. 731.02:

Each member of the legislative authority shall be an elector of the city, shall not hold any other public office, except that of notary public or member of the state militia, and shall not be interested in any contract with the city, and no such member may hold employment with said city.

The Commission is aware that the City of North Canton is a Charter municipality, and the charter provision that is comparable to R.C. 731.02 provides that the "members of council shall hold no other elective public office. They shall not otherwise be employed by, nor shall they hold any other office in, this municipality, except as provided by the Charter." North Canton Municipal Charter 5.04. The application of these provisions to you is a question for the legal advisors for the district and the city.

Conclusion

As explained more fully above, R.C. 2921.42(A)(4) prohibits you from serving simultaneously as a member of both the board of health and the city council.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on November 28, 2007. 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,


Karen R. King
Staff Advisory Attorney