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March 10, 2010 Informal Opinion 2010-INF-0310-4

James Nargang
[REDACTED]

Dear Mr. Nargang:

On November 9, 2009, the Ohio Ethics Commission received your letter requesting an advisory opinion. In your letter, you explained that you are Director of Capital Planning for the Board of Regents (BOR). You have asked whether the Ethics Law and related statutes prohibit you, while you are an employee of BOR, from pursuing future employment with a private firm that has a contract with BOR.

Brief Answer

As explained more fully below, because you recommended that BOR enter into the contract with the private firm and you are the Project Representative for BOR on the contract, R.C. 102.03(D) and (E) prohibit you, while you are an employee of BOR, from soliciting, accepting, or using your position to secure future employment with the firm.

Facts Presented

In your letter, you explained that, as Director of Capital Planning for BOR, you make recommendations to the agency director regarding state capital allocations to state-supported colleges and universities. You also make recommendations regarding statewide policy issues for colleges and universities, including planning activities that involve contracts with private firms. In this role, you recommended that the agency seek a contract with the private firm for a capital planning study. The Chancellor and Board made the final approval for the contract.

You have explained that the private firm provides capital planning services to colleges and universities across the country, and has 230 campuses nationwide as its clients. While you are an employee of BOR, you would like to notify the private firm of your interest in private employment.

Job Seeking—R.C. 102.03(D) and (E)

As an employee of BOR, you are a public employee subject to the conflict of interest restrictions in R.C. 102.03(D) and (E), which 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.

"Anything of value" is defined to include "the promise of future employment." R.C. 1.03; 102.01(G).

R.C. 102.03(D) prohibits a public employee from using the authority or influence of his public position to secure an employment opportunity. Ohio Ethics Commission Advisory Opinions No. 86-006 and 87-004. In addition, R.C. 102.03(E) prohibits a public employee from merely *soliciting* employment opportunities from a party while performing his public duties with respect to that party. Adv. Op. No. 92-005. Future employment, in these situations, is of such a character as to impair the public employee's objectivity and independence of judgment with respect to the exercise of his authority in matters affecting a potential employer who is doing or seeking to do business with, regulated by, or interested in matters before the public agency he serves. Adv. Ops. No. 91-010 and 95-001.

In order to seek employment from any party that is doing business with the BOR, you must be able to fully withdraw from any use of your position or authority on matters affecting the interests of that party. See Adv. Ops. No. 91-009 and 92-005. In this situation, you recommended the firm to BOR and currently serve as BOR's Project Representative on its contract with the firm. For an employee at your level to effectively withdraw from matters affecting a potential source of employment, the matters would have to be handled by the Chancellor or another official at BOR whose position is superior to, or acts as a check upon, your authority as Director of Capital Planning. Adv. Ops. No. 92-004 and 92-008. The transfer of authority necessary for withdrawal must also be allowable under relevant provisions of the Revised Code and your withdrawal cannot interfere with your overall performance of your public duties. Adv. Ops. No. 89-006, 89-010, and 90-002.

The Commission has explained that a public employee has a responsibility to provide services that fulfill the statutory mandate of his or her public agency in an objective and impartial manner. Adv. Op. No. 89-010. This responsibility to the public agency must not be hindered by any improper influence. *Id.* The Ohio Ethics Law and related statutes do not require that a

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public agency change the way it operates in order to allow a public employee to pursue private business opportunities where there may be conflicts of interest. Adv. Op. No. 2004-03.

Because you recommended that BOR enter into the contract with the private firm and you are the Project Representative for BOR on the contract, R.C. 102.03(D) and (E) prohibit you, while you are employed at BOR, from soliciting, accepting, or using your position to secure employment with the firm.¹

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on March 9, 2010. 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,



Jennifer A. Hardin
Chief Advisory Attorney

¹ If you were to leave your state employment in order to seek a job with the firm, you should note that the revolving door law would apply to you. For one year after leaving public employment, R.C. 2921.42(A)(3) would prohibit you from accepting employment with the firm in a position where you would profit from the contract between BOR and the firm. Also for one year, R.C. 102.03(A)(1) would prohibit you from representing the firm before BOR, or any other public agency, on any matters in which you personally participated during your public employment. R.C. 102.03(B) would prohibit you from disclosing or using any confidential information you acquired during your employment at BOR. There is no time limit for the prohibition against disclosing or using confidential information. If you decide to leave state employment in order to seek a job with the firm, you should contact the Commission for additional guidance.