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December 2, 2010

Informal Opinion 2010-INF-1202

Marilyn J. Reid, County Commissioner
Greene County

Dear Commissioner Reid:

On June 23, 2010, the Ohio Ethics Commission received your letter requesting an advisory opinion. In your letter, you explained that you are a county commissioner for Greene County (county). Your term will end in January 2013.

You explained that, in January 2005, the county entered into a development agreement with the city of Beavercreek (city) and Greene Towne Center, LLC (The Greene) for construction of a lifestyle center in the city. The county issued a bond anticipation note for infrastructure improvements to be paid with proceeds from a tax increment financing agreement (TIF).

You have explained that your ex-husband owns over twenty acres of commercial property located approximately one mile east of the center on the same street. You have stated that the property is currently being offered for sale. You stated that you believe the property would be inherited by your sons and grandchildren, and that it is possible that the property could be or has been transferred into a trust for your sons without your knowledge.

You have asked whether you, as a commissioner, are prohibited from taking any action on the outstanding bond anticipation note when it is renewed annually. Specifically, you have asked whether you can participate if these matters are before the commissioners: (1) transfer of funds to pay on the note to be retired; (2) approval of the voucher to pay off the note that is retired; and (3) approval of the renewal of the bond anticipation note.

Brief Answer

As explained more fully below, provided that you, your children, and your grandchildren do not have any current claim or ownership interest in your ex-husband's property, R.C. 102.03(D) does not prohibit you from discussing, deliberating, voting, or otherwise participating, formally or informally, in the decisions of the county commissioner that affect the value of the property. If you, your children, or your grandchildren do have a current claim or ownership interest in property owned by your ex-husband, you are prohibited from participating in matters before the county commissioners affecting the value of the property.

Conflict of Interests—Property Matters

As a county commissioner, you are subject to R.C. 102.03(D) which provides:

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.

R.C. 102.01(B) and (C). Ohio Ethics Commission Advisory Op. No. 98-002.

“Anything of value” is defined to include money and every other thing of value. R.C. 102.03(G). The beneficial or detrimental financial impact on the value of property that results from a public agency's land use decisions is a thing of value for purposes of R.C. 102.03(D). Adv. Op. No. 98-002.

R.C. 102.03(D) prohibits a public official from participating formally or informally, within the scope of her public authority, on land-use decisions affecting property bordering or near her property because the land-use decision could have a definite and direct beneficial or detrimental financial impact upon the value of her property. Adv. Ops. No. 88-004, 92-013, and 92-019. For example, in Advisory Opinion No. 92-019, the Ethics Commission held that R.C. 102.03(D) prohibited a city council member from voting, discussing, deliberating, or otherwise using the authority or influence of his public position, formally or informally, in actions of the city council regarding a proposed road extension located near his property.

Therefore, if you have any current claim on or ownership interest in the property you have described, R.C. 102.03(D) prohibits you from discussing, deliberating, voting, or otherwise participating, formally, or informally, in the decisions of the county commission you serve on matters that affect the value of the property. If you do not have a current claim on or ownership interest in your ex-husband's property, the county's decisions regarding a TIF on property located one mile away from the property will not result in a definite and direct benefit for you. In that case, you are not prohibited from participating, in any way, in the commissioners' decisions on these matters: (1) transfer of funds to pay on the note to be retired; (2) approval of

the voucher to pay off the note that is retired; and (3) approval of the renewal of the bond anticipation note.

However, it is still necessary to consider whether the interests of your children or grandchildren will prohibit you from participating.

Conflict of Interest—Property Owned by a Family Member

The Ethics Commission has also concluded that 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 relationship. Adv. Ops. No. 88-004, 89-008, and 98-002. If the official's family member will receive a definite and direct benefit from a matter before her, the benefit will impair the official's objectivity and independence of judgment because of the closeness of the relationship. Adv. Op. No. 98-002.

For example, in Advisory Opinion No. 98-002, the Ethics Commission held that R.C. 102.03(D) prohibits a city council member from voting, deliberating, participating in discussions, or otherwise using her official authority or influence with regard to any matter that would provide a definite and particular pecuniary benefit or detriment to property owned by her brother. The Commission concluded that, because the family relationship between a public official and her brother is so close, a thing of value received by her brother as a result of the property matter will impair the council member's objectivity and independence of judgment regarding the matter. Adv. Op. No. 98-002.

Provided that your marriage is wholly severed and there is no ongoing economic or business connection between you and your ex-husband, your relationship with your ex-husband is not sufficiently close that any benefit or detriment to your ex-husband would have a substantial and improper influence upon you with respect to the performance of your job duties. Therefore, R.C. 102.03(D) does not prohibit you from participating in matters before the county commissioners that affect the value of your ex-husband's property.

However, if any of your children or grandchildren has a current claim on or ownership interest in your ex-husband's property, directly or through a trust, R.C. 102.03(D) prohibits you from discussing, deliberating, voting, or otherwise participating, formally, or informally, in the decisions of the county commission you serve on matters that affect the value of the property. The relationship between you and your children and grandchildren is close enough that any benefit or detriment to them resulting from a matter before the county commissioners is of such a character as to substantially and improperly influence you in the exercise of your authority. The same restriction would apply to any other land use matters before the commissioners affecting property owned by your ex-husband if your children or grandchildren have an ownership interest or claim on the property.

If neither your children nor grandchildren have a current claim or ownership interest in the property, R.C. 102.03(D) does not prohibit you from participating in matters affecting the value of the property. The fact that your children or grandchildren may or will, at some unspecified time in the future, have an interest in the property is not sufficient to demonstrate that any benefit or detriment to the value of the property will definitely and directly affect their interests and, as a result, your objectivity and independence of judgment.

Conclusion

As explained more fully above, provided that you, your children, and your grandchildren do not have any current claim or ownership interest in your ex-husband's property, R.C. 102.03(D) does not prohibit you from discussing, deliberating, voting, or otherwise participating, formally or informally, in the decisions of the county commissioner that affect the value of his property. If you, your children, or your grandchildren do have a current claim or ownership interest in property owned by your ex-husband, you are prohibited from participating in matters before the county commissioners affecting the value of the property.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on November 17, 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,

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

Jennifer A. Hardin
Chief Advisory Attorney