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January 17, 2013

Informal Opinion 2013-INF-0117

Maria J. Armstrong
Bricker & Eckler LLP



Dear Ms. Armstrong:

On December 28, 2012, the Ohio Ethics Commission received your letter requesting an advisory opinion on behalf of the State Treasurer of Ohio (Treasurer). You have asked:

- Whether the Treasurer is prohibited from refinancing his home mortgage with a bank that does business with the Treasurer's office; and
- Whether refinancing his home mortgage would impair the Treasurer's ability to participate, in his official capacity, in matters affecting the bank.

Brief Answer

Based on the facts you have described, the Treasurer is not prohibited from refinancing his home mortgage with the bank or from participating, in his official capacity, in matters affecting the bank.

Key Facts

This opinion relies on all of the facts you described in your letter. The key facts are:

- The Treasurer is considering refinancing the mortgage on his personal residence with JP Morgan Chase (bank) or an affiliate of the bank.

- The bank is currently doing business with the Treasurer's office. The bank's current relationship with the Treasurer's office is substantially similar to the relationship it has had with the office prior to the current Treasurer taking office on January 10, 2011.
- The bank has a long history of serving as a custodian of state assets and has been a qualified broker/dealer with the Treasurer's office since at least 2000, as well as providing other financial services for the state.
- The bank will provide a letter stating that: (a) the bank's decision to provide the refinanced mortgage was evaluated using the same criteria as those mortgages offered to all potential borrowers; (b) the terms and conditions of the Treasurer's refinance agreement will be similar to those offered to other borrowers with similarly situated income, assets, debts, and credit history; and (c) that the Treasurer's relationship with the bank is that of an ordinary customer.

Duties of the Treasurer of State

The Treasurer of State is primarily responsible for:

- Presiding over and managing state moneys deposited into the state treasury;¹
- Maintaining custody of money in custodial funds that are not part of the state treasury;²
- Making payments of money from the state treasury and custodial funds when properly ordered;³ and
- Investing money belonging to the state and money in custodial funds.⁴

Conflicts of Interest

The conflict of interest laws (R.C. 102.03(D) and (E)) apply to the Treasurer.⁵ These laws prohibit the Treasurer from:

- Using his position to secure anything of value that is of such a character as to manifest a substantial and improper influence on him with respect to his duties; and
- Soliciting or accepting anything of value that is of such a character as to manifest a substantial and improper influence on him with respect to his duties.

A thing of value is of such a character as to manifest a substantial and improper influence upon a public official with respect to his duties if it could impair his objectivity and independence of judgment in matters affecting the source of the thing of value.⁶ The Commission has explained that a thing of value is of such a character if it is:

- (1) Of a substantial nature or value; and
- (2) From a source that is doing or seeking to do business with, regulated by, or interested in matters before the agency the official serves.⁷

Further, the Commission has explained that R.C. 102.03(D) prohibits a public official from taking any action to secure a substantial thing of value for the official and for any other person with whom the official has a close economic relationship.⁸ In other words, a public official cannot make decisions, in the scope of his public position, which would result in a substantial benefit for these related parties.⁹

Public Treasurers and Banks

Public treasurers, including the Treasurer of State, oversee the investment of public funds with banks.¹⁰ In 1998, the Commission considered whether a public treasurer could have a private financial relationship, such as a checking or savings account, credit card, or mortgage loan, with a bank that has received or seeks to receive deposits from the public agency the treasurer serves.¹¹

The Commission concluded that R.C. 102.03(D) and (E) do not prohibit a public treasurer who is an “ordinary customer” of a depository bank from:

- Having a private financial relationship with the bank; and
- Participating, in his official capacity, in matters that affect the bank.

The Commission concluded that a person is an ordinary customer of a bank if: (a) the relationship between the person and the bank is subject to fixed terms; and (b) the same terms are available to all other eligible bank customers.¹²

Application to the Treasurer

You have explained that the bank will provide a letter stating that: (a) the bank’s decision to provide the refinanced mortgage was evaluated using the same criteria as those mortgages offered to all potential borrowers; (b) the terms and conditions of the Treasurer’s refinance agreement will be similar to those offered to other borrowers with similarly situated income, assets, debts, and credit history; and (c) that the Treasurer’s relationship with the bank is that of an ordinary customer.

On this basis, provided that there are no extraordinary circumstances involved in the refinance agreement between the Treasurer and the bank that are not described in your letter, the Treasurer is an ordinary customer of the bank.¹³ As an ordinary customer of the bank, R.C. 102.03(D) and (E) do not prohibit the Treasurer from:

- Refinancing his home mortgage with the bank; or
- Participating, in his official capacity, in matters affecting the bank.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on January 17, 2013. 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

The Ohio Ethics Commission Advisory Opinions referenced in this opinion are available on the Commission's Web site: www.ethics.ohio.gov.

¹ R.C. 113.05(A); see R.C. 113.13.

² R.C. 113.05(B) (a custodial fund consists of money, claims, bonds, notes, or other obligations, stocks or other securities, receipts or other evidence of ownership, and other intangible assets that are required by law to be kept in the custody of the treasurer of the state but are not part of the state treasury); R.C. 113.051.

³ R.C. 113.11; R.C. 113.12.

⁴ R.C. 113.051; R.C. 135.143; R.C. 135.45; R.C. 135.46.

⁵ R.C. 102.01(B) and (C).

⁶ Ohio Ethics Commission Advisory Opinions No. 91-010 and 95-001.

⁷ Adv. Ops. No. 2001-03 and 2004-03.

⁸ Adv. Op. No. 97-002.

⁹ Id.

¹⁰ R.C. Chapter 135. (The Uniform Depository Act, which governs public deposits in Ohio and sets forth the depository duties of the treasurers of public agencies including the State Treasurer).

¹¹ Adv. Op. No. 98-001.

¹² The Commission identified four factors that would suggest a public official is not an ordinary customer of the bank. None of the four factors applies in this situation.

¹³ The fact that the Treasurer receives military closing cost credits from the bank, on the same terms and subject to the same requirements as other military veterans, is not an extraordinary circumstance.