



## OHIO ETHICS COMMISSION

150 EAST BROAD STREET

COLUMBUS 43215

(614) 466-7090

Advisory Opinion No. 79-003

May 17, 1979

Syllabus by the Commission:

(1) Division (D) of Section 102-03 of the Revised Code prohibits a member of a township zoning commission from voting to approve a zoning change or variance for property in which he has a commission interest as a real estate agent.

(2) Division (C) of Section 102.04 of the Revised Code prohibits a member of a township zoning commission from receiving compensation, in the form of a real estate commission, for any service rendered by him personally in a zoning change or variance that is before the zoning commission.

In your request for an Ohio Ethics Commission Advisory opinion, you asked whether the Ohio Ethics Law would prohibit a member of a township zoning commission from serving as the real estate agent on a sale of real property that is contingent on a zoning change or variance.

You stated, by way of history, that the person in question is a member of a township zoning commission and is employed as a real estate salesman and as the owner and operator of a construction firm. You stated further that as a real estate salesman, he is in contact with individuals and firms that wish to locate in the area and seek a zoning variance or change to accommodate their planned projects. You asked whether the Ohio Ethics Law would permit the person to be involved in real property transactions that are contingent on zoning changes or variances that must be approved by the zoning commission on which he serves.

Division (D) of Section 102.03 of the Revised Code provides:

"No public official or employee shall use or attempt to use his official position to secure anything of value for himself that would not ordinarily accrue to him in the performance of his official duties, which thing is of such character as to manifest a substantial and improper influence upon him with respect to his duties."

The pertinent elements of Division (D) of Section 102.03 of the Revised Code are: 1) a public official or employee; 2) is prohibited from using or attempting to use his official position; 3) to secure anything of value for himself; 4) the thing of value must be something that would not ordinarily accrue to the official or employee in the performance of his official duties; and 5) the thing of value must be of such character as to manifest a substantial and improper influence upon him with respect to his duties.

In the instant case, a member of a township zoning commission is a "public official or employee," as that term is defined in Division (B) of Section 102.01 of the Revised Code. (See:

Ohio Revised Code Section 519.04 et. seq.) A commission on a sale of real property is something of value that would not ordinarily accrue to a member of a township zoning commission. In addition, an official who voted to approve a zoning change or variance in which he has a commission interest would, in the Commission's view, be using or attempting to use his position. Finally, the prospect of the real estate commission would manifest a substantial and improper influence upon the public official with respect to his duties, in that it could affect his vote as a member of the township zoning commission. We conclude, therefore, that Division (D) of Section 102.03 of the Revised Code prohibits a member of a township zoning commission from voting to approve a zoning change or variance for property in which he has a commission interest as a real estate agent.

Division (C) of Section 102.04 of the Revised Code provides, in pertinent part:

"No person who is elected or appointed to an office of or employed by a . . . township. . . shall receive or agree-to receive directly or indirectly compensation other than from the agency with which he serves for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter which is before any agency, department, board, bureau, commission, or other instrumentality, excluding the courts, of the entity of which he is an officer or employee."

The pertinent elements of this provision are: 1) a person who is elected or appointed to an office of a township; 2) is prohibited from receiving or agreeing to receive compensation, directly or indirectly, other than from the township; 3) for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter which is before the township or any agency of the township, including the township zoning commission. We conclude, therefore, that Division (C) of Section 102.04 of the Revised Code prohibits a member of a township zoning commission from receiving compensation, in the form of a real estate commission, for any service rendered by him personally in a zoning change or variance that is before the zoning commission on which he serves.

Finally, your attention is directed to Division (A) of Section 102.03 of the Revised Code, which prohibits a public official or employee from representing a private client on any matter before the entity of government with which he serves on any matter in which he is directly concerned and personally participates by a substantial and material exercise of administrative discretion. In addition, Section 2921.43 of the Revised Code prohibits any promise, offer, or gift of any valuable thing or valuable benefit to a public official or employee with purpose to corrupt or influence him with respect to his official duties. Although the latter provision is not within the Ohio Ethics Commission's statutory interpretative authority, the Commission makes reference to it for your information.

The Commission wishes to emphasize that employment as a real estate salesman while serving on a township zoning commission is not, in and of itself, a violation of the Ohio Ethics Law, but may create a situation in which a violation could occur, depending on the facts and circumstances of a -particular zoning matter.

The conclusions of this advisory opinion are based on an examination of the facts presented. The Ohio Ethics Commission cautions that its advisory opinions may be relied upon only with respect to questions arising under Chapter 102. and Section 2921.42 of the Revised Code, and do not address possible violations of other laws or rules.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that:  
1) Division (D) of Section 102.03 of the Revised Code prohibits a member of a township zoning commission from voting to approve a zoning change or variance for property in which he has a commission interest as a real estate agent; and 2) Division (C) of Section 102.04 of the Revised Code prohibits a member of a township zoning commission from receiving compensation, in the form of a real estate commission, for any service rendered by him personally in a zoning change or variance that is before the zoning commission.

  
MARY K. LAZARUS, Chairperson  
Ohio Ethics Commission

