



OHIO ETHICS COMMISSION

150 EAST BROAD STREET
COLUMBUS 43215
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Advisory Opinion No. : 80-007

October 23, 1980

Syllabus by the Commission:

- 1) Division (D) of Section 102.03 of the Revised Code prohibits a city council member from participating in discussions or voting on council matters regarding a downtown revitalization project which would benefit his property.
- 2) Section 2921.42 of the Revised Code prohibits a city council member from knowingly participating in discussions or voting to approve a public contract for downtown revitalization which would benefit his property.

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In your request for an Ohio Ethics Commission Advisory Opinion, you asked whether the Ohio Ethics Law and related statutes would prohibit a city council member from participating in discussions or voting on council matters regarding a downtown revitalization project which would benefit his property.

You stated, by way of history, that the city has undertaken a downtown revitalization project, which would consist of street paving, sidewalks, tree planting, and lighting. The area in question would be six blocks along the major north-south street and two blocks along three of the major east-west streets of the city. None of the construction work involves alteration of the privately owned buildings facing the affected streets. The project was initiated by petitions of the owners of the property in the target area. The petitioners have agreed to absorb as direct assessments approximately half of the cost of the project; the balance would be paid from general obligation bonds funded by a direct charge against the city's general fund. Two members of city council have interests in the area. one owns one-fourth of a city block on the main intersection of the city. The other owns 5/11 of the outstanding shares of a corporation which has purchased, by land contract, a building in a portion of the project where only the lighting is to be improved. In order for the project to proceed, city council would be required to adopt a resolution of necessity and other legislation. The council members in question asked whether the Ohio Ethics Law and related statutes would prohibit them from participating in discussions or voting on council legislation regarding this project.

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 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 would not ordinarily accrue to him in the performance of his official duties; and 5) the thing of value is of such character as to manifest a substantial and improper influence upon him with respect to his duties.

A city council member is a "public official or employee," as defined in Division (B) of Section 102.01 of the Revised Code. The council member's participation or vote on this matter would constitute use of official position. The enhancement of the value of the property owned by the council member is "something of value" that would not ordinarily accrue to a member of city council in the performance of his official duties (See: Ohio Ethics Commission Advisory opinion No. 79-008). Finally, the arrangement in question could manifest a substantial and improper influence upon a council member with respect to his duties, because his personal interest could affect his vote, thus impairing his independence of judgment as a member of city council. This analysis is applicable to both council members under the facts presented.

We conclude, therefore, that Division (D) of Section 102.03 of the Revised Code prohibits a city council member from voting on council matters regarding a downtown revitalization project which would benefit his property.

Section 2921.42 of the Revised Code prohibits a public official from knowingly: 1) authorizing, voting, or otherwise using the authority or influence of his office to secure approval of a public contract in which he, a family member, or a business associate has an interest; 2) having any interest in the profits or benefits of a public contract entered into by or for the use of the governmental entity with which he serves. The term "public contract" is defined in Division (E) of Section 2921.42 of the Revised Code as follows:

- 1) the 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;
- 2) a contract for the design, construction, alteration, repair, or maintenance of any public property.

In the instant case, a project for the revitalization of a downtown area, which involves the design, construction, repair, or other work on city streets and sidewalks in the area is a "public contract" for purposes of Section 2921.42. In addition, a person whose property will directly benefit from the project, and who has agreed to a direct assessment of one-half of the cost of the project, is "interested" in the public contract for purposes of this Section. Therefore, a member of city council is prohibited from knowingly: 1) authorizing, voting, or otherwise using the authority or influence of his office to secure approval of a public contract in which he has an interest; and 2) having any interest in the profits or benefits of such a public contract.

This is not to say that city council may not undertake the project, but merely that the council members in question are prohibited by Sections 102.03 (D) and 2921.42 of the Revised Code from participating in discussions or voting on the project.

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 purport to interpret other laws, rules, or ordinances.

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 city council member from participating in discussions or voting on council matters regarding a downtown revitalization project which would benefit his property; and 2) Section 2921.42 of the Revised Code prohibits a city council member from knowingly participating in discussions or voting to approve a public contract for downtown revitalization which would benefit his property.


MEROM BRACHMAN, CHAIRMAN
OHIO ETHICS COMMISSION