



OHIO ETHICS COMMISSION

150 EAST BROAD STREET

COLUMBUS 43215

(614) 466-7090

Advisory Opinion No. : 81-003

April 30, 1981

Syllabus by the Commission:

The Ohio Ethics Law and Section 2921.42 of the Revised Code prohibit a board member of a private contract agency from serving on a county board of mental retardation and developmental disabilities.

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You asked whether the Ohio Ethics Law and related statutes prohibit a member of a county board of mental retardation and developmental disabilities from serving as a member of the board of a private agency that contracts with the county board.

You stated, by way of history, that a member of a county board of mental retardation and developmental disabilities (hereinafter "169 board") is a board member of a contract agency, a private firm that contracts with the 169 board to provide services for 169 board clients.

You directed the attention of the Commission to Division (B) of Section 5126.03 of the Revised Code, enacted in Am. Sub. S.B. 160 of the 113th General Assembly, effective October 31, 1980, which provides:

A person may not serve as a member of a county board of mental retardation and developmental disabilities when either he or a member of his immediate family is a board member of a contract agency of that county board unless there is no conflict of interest. In no circumstance shall a member of a county board vote on any matter before the board concerning a contract agency of which he or a member of his immediate family is also a board member or an employee. All questions relating to the existence of a conflict of interest shall be submitted to the local prosecuting attorney and the Ohio ethics commission for resolution.

Division (B) of Section 5126.03 provides that a person may not serve on a 169 board when he or an immediate family member is a board member of a contract agency, ". . . unless there is no conflict of interest."

The Ohio Ethics Commission is authorized to determine whether a conflict of interest exists under Chapter 102. or Section 2921.42 of the Revised Code.

Division (A)(4) of Section 2921.42 of the Revised Code prohibits a public official from knowingly having any interest in the profits or benefits of a contract by or for the use of the governmental entity with which he serves. This provision prohibits a 169 board member from having any interest in a public contract between the 169 board and a contract agency. A contract

agency board member's fiduciary or pecuniary interest in the contract agency constitutes a conflict of interest with respect to his duties as a member of the 169 board. Therefore, under Division (B) of Section 5126.03 of the Revised Code, a board member of a contract agency may not serve on the 169 board. [For possible exceptions, applicable in specific fact situations, see Divisions (B) and (C) of Section 2921.42 of the Revised Code]

Three provisions of chapter 102. of the Revised Code, the Ohio Ethics Law, suggest other circumstances in which a conflict of interest might exist:

- 1) Division (A) of Section 102.03 of the Revised Code prohibits a 169 board member from representing a private client, including a contract agency of which he is a board member, before any public agency on any matter in which he personally participated as a member of the 169 board.
- 2) Division (D) of Section 102.03 of the Revised Code prohibits a 169 board member from using or attempting to use his official position for personal gain or benefit; and
- 3) Division (C) of Section 102.04 of the Revised Code prohibits a 169 board member from receiving compensation, directly or indirectly, except from the 169 board, for any service rendered or to be rendered by him personally in any matter before the 169 board or any other county agency.

The conduct proscribed by these provisions would constitute a conflict of interest sufficient to preclude a contract agency board member from serving on the 169 board.

In addition, Division (A)(1) of Section 2921.42 and Division (D) of Section 102.03 of the Revised Code prohibit a 169 board member from voting on any matter before the 169 board in which he has an interest. This is consistent with Division (B) of Section 5126.03 of the Revised Code, which specifically prohibits a 169 board member from voting on any matter concerning a contract agency of which he is a board member. Therefore, even if it is determined that a contract agency board member may serve on the 169 board, he may not vote on any matter before the 169 board concerning the contract agency with which he serves.

The Commission cautions that its advisory opinions are based on the facts presented, and are rendered only with regard to questions arising under Chapter 102. and Section 2921.42 of the Revised Code.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that the Ohio Ethics Law and Section 2921.42 of the Revised Code prohibit a board member of a private contract agency from serving on a county board of mental retardation and developmental disabilities.


JOHN BENSON, CHAIRMAN
OHIO ETHICS COMMISSION