



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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COLUMBUS, OHIO 43215
(614) 466-7090

Advisory Opinion Number 82-001
March 4, 1982

Syllabus by the Commission:

- 1) Division (D) of Section 102.03 of the Revised Code prohibits a city engineer from reviewing private engineering work prepared by him or by other members of the firm by which he is employed.
- 2) Division (C) of Section 102.04 of the Revised Code prohibits an individual or firm serving-as a city engineer from receiving compensation from private clients for engineering services provided in a matter before the city engineer's office or any other agency of the city.

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You asked whether the Ohio Ethics Law and related statutes prohibit a city engineer from reviewing engineering work submitted for city approval by members of the firm by which he is employed.

You stated, by way of history, that an architectural and engineering firm has contracted with the city to serve as city engineer, and the firm has assigned an employee to perform the duties of city engineer. You stated further that the firm and the individual also provide engineering services for private clients in the city, and it is often difficult to anticipate whether a particular project may subsequently require city approval. You noted that the Ohio Ethics Law prohibits a city engineer from reviewing his own private engineering work (See: Ohio Ethics Commission Advisory Opinions No. 78-004 and 79-007). You asked whether the city engineer may review work submitted for city approval by other members of the firm by which he is employed.

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.

Prior Ohio Ethics Commission Advisory opinions have held that a part-time city engineer, including a corporation or its designee serving as city engineer under an independent contract, is a "public official" for purposes of Chapter 102. and Section 2921.42 of the Revised Code (See: Ohio Ethics Commission Advisory Opinions No. 77-004 and 78-004).

By reviewing his own engineering work or the work of members of his firm, the city engineer would be using his position to secure something of value, client fees, that would not ordinarily accrue to the city engineer in the performance of his official duties. This arrangement could manifest a substantial and improper influence on the city engineer with respect to his duties to the extent that his personal interests could impair his independence of judgment as city engineer (See: Ohio Ethics Commission Advisory Opinion No. 78-004).

Division (C) of Section 102.04 of the Revised Code prohibits a city official or employee from receiving compensation, directly or indirectly, other than from the city 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 of the city with which he serves. In the instant case, the firm serving as city engineer is prohibited from receiving compensation from private clients for services rendered in a matter which is or will become part of a "case, proceeding, application, or other matter," before the city or any agency of the city, even if the matter does not come before the city engineer's office (See: Ohio Ethics Commission Advisory opinions No. 75-006, 78-004, and 79-007).

However, if a partner or employee of the engineering firm were appointed city engineer, as an individual, the prohibition would apply only to those services which he renders personally in a matter before the city, and not to services performed by other members of the firm. In addition, Division (C) of Section 102.04 of the Revised Code would not prohibit the city engineer from receiving a share of partnership profits from fees for services rendered by another member of the firm in matters before the city, provided the city engineer does not review the work (See: Ohio Ethics Commission Advisory opinions No. 77-001 and 78-005).

The conclusions of this opinion are based on the facts presented, and are rendered only with regard to 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: 1) Division (D) of Section 102.03 of the Revised Code prohibits a city engineer from reviewing private engineering work prepared by him or by other members of the firm by which he is employed; and 2) Division (C) of Section 102.04 of the Revised Code prohibits an individual or firm serving as a city engineer from receiving compensation from private clients for engineering services provided by him in a matter before the city engineer's office or any other agency of the city.


MEROM BRACHMAN, CHAIRMAN
Ohio Ethics Commission