



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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Advisory Opinion No. 83-010
December 1, 1983

Syllabus by the Commission:

Division (A)(4) of Section 2921.42 of the Revised Code does not prohibit a city council member from serving on the board of a non-profit research and community development corporation that contracts with the city, provided the council member serves on the board in his official capacity as directed by council.

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You asked whether the Ohio Ethics Law and related statutes, particularly Section 2921.42 of the Revised Code, would prohibit a city council member from serving on the board of a non-profit research and community development corporation, that was created to promote business development in the community and that sells goods or services to the city, if the council member serves on the board in his official capacity.

You stated, by way of history, that members of city council are frequently asked to serve on the boards of community organizations, such as charitable, cultural, educational, historical, humanitarian, research, and related organizations. Specifically, a member of city council has been asked to serve on the board of a non-profit corporation created to provide research and data to promote, encourage, assist in the development of business and industry in the metropolitan area in which the city is located. The non-profit corporation will be created with funds provided by the city, the city chamber of commerce, and a state university located in the city; it is contemplated that there will be a contractual relationship among the various parties. The board will consist of seven members, including community business and civic leaders, representatives of the Chamber of Commerce and the university, and a representative of the city designated by council to serve in his official capacity.

Division (A)(4) of Section 2921.42 of the Revised Code provides, in pertinent part:

(A) No public official shall knowingly do any of the following:

(1) Authorize, or employ the authority or influence of his office to secure authorization of any public contract in which he, a member of his family, or any of his business associates has an interest; . . .

(4) Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which he is connected.

A member of city council is a "public official" as that term is defined in Division (A) of Section 2921.01 of the Revised Code, and the arrangement in question is a "public contract" as defined in Division (E) of Section 2921.42 of the Revised Code.

In Advisory Opinion No. 81-008, the Commission held that Division (A)(4) of Section 2921.42 of the Revised Code prohibits a city council member from serving on the board of a non-profit corporation that contracts to sell goods or services to the city. In holding that a board member of a non-profit corporation has an "interest" in the contracts between the non-profit corporation and the city, the Commission recognized that certain non-profit corporations compete in the market-place. The Commission observed that this dual interest creates a situation "in which there is a risk that private considerations may detract from serving the public interest." The Commission also pointed out that the exemption of Division (C) of Section 2921.42 of the Revised Code is applicable to transactions which involve city purchases of goods or services that are: (1) otherwise unobtainable; (2) unavailable elsewhere for the same or lower cost; or (3) furnished as part of a continuing course of dealing established prior to the council member's election.

The Commission clarified this position in Advisory Opinion No. 82-004, holding that Division (A)(4) of Section 2921.42 of the Revised Code does not prohibit a city administrator or council member from serving on the board of a non-profit corporation that receives funds through the city under a state litter control grant, if he serves in his official capacity as required under the terms of the grant. The Commission reasoned that under the guidelines issued by the state Office of Litter Control, the board of the non-profit corporation must include a city administrator or council member. Therefore, the Commission distinguished this situation from Advisory Opinion No. 81-008, since the public official does not have a prohibited personal interest in the public contract; the public officials "interest" in Advisory Opinion No. 82-004 was that of the city.

In the instant case, the city council seeks to designate a member of council to represent the interests of the city on the board of the non-profit community development corporation. The official designation by a sovereign governmental entity, requiring that a council member serve on the board of the non-profit community development corporation in his official capacity, is sufficient to demonstrate that the public official does not have a prohibited personal interest in the public contract.

The conclusions of this opinion are based on the facts presented and are rendered only in 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 Division (A)(4) of Section 2921.42 of the Revised Code does not prohibit a city council member from serving on the board of a non-profit research and community development corporation that contracts with the city, provided that the council member serves on the board in his official capacity as directed by council.



Dean S. Lucal, Chairman
OHIO ETHICS COMMISSION