



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
8 EAST LONG STREET, SUITE 210
COLUMBUS, OHIO 43215
(614) 466-7090

Advisors Opinion No. 84-009
July 20, 1984

Syllabus by the Commission:

(1) Division (D) of Section 102.03 of the Revised Code prohibits a member of the professional staff of a community developmental center operated by the Department of Mental Retardation and Developmental Disabilities from serving as an employee of, or consultant to, a corporation that operates group homes under contract with the Department to provide residential services in the community for clients under the Department's jurisdiction.

(2) Division (A)(1) of Section 2921.42 of the Revised Code prohibits a member of the professional staff of a community developmental center operated by the Department of Mental Retardation and Developmental Disabilities from authorizing or using the authority or influence of his office to secure approval of the placement of Department clients in a group home operated by a corporation with which he serves as an employee or consultant.

* * * * *

You asked whether the Ohio Ethics Law and related statutes prohibit a member of the professional staff of a community developmental center operated by the Department of Mental Retardation and Developmental Disabilities (hereinafter Department) from serving as an employee of, or consultant to, a corporation that operates group homes under contract with the Department to provide residential services in the community for clients under the Department's jurisdiction.

You stated, by way of history, that the Department employs occupational therapists, physical therapists, teachers, nurses, psychologists, psychiatrists, sociologists, and other mental health professionals at community developmental centers. These professionals serve on individual habilitation teams that recommend individual habilitation plans and individual education plans for Department clients. You indicated that these plans include the recommendation of appropriate residential services, including those provided by group homes for mentally retarded people. You stated further that a corporation that operates group homes in the area employs or retains as consultants some of the professional staff of the community developmental center to provide professional services during their off-hours. These group homes are under a purchase of services contract with the Department to provide residential services in the community for clients under the Department's jurisdiction. The Department reimburses the group homes for the care provided to its clients plus administrative costs. You asked whether the Ohio Ethics Law and related statutes prohibit these staff members of the community developmental center from working for the group homes.

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

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.

A member of the professional staff of a community developmental center operated by the Department is a "public official or employee" as defined in Division (B) of Section 102.01 of the Revised Code. In past advisory opinions, the Commission has held that Division (D) of Section 102.03 of the Revised Code prohibits a public official or employee from soliciting or receiving consulting fees, honoraria, conference registration fees, and other things of value from parties that are interested in matters before or regulated by the agency with which the public official or employee serves (See: Advisory Opinions No. 79-002, 79-006, and 80-004). This prohibition would also apply to a party that is doing business or seeking to do business with the agency with which the public official or employee serves. A salary or fee received for services rendered as an employee of, or consultant to, a corporation that operates group homes is within the definition of "anything of value" in Section 1.03 of the Revised Code, and it would not ordinarily accrue to a staff member in the performance of his official duties for the Department. Such a salary or fee is of such character as to manifest a substantial and improper influence on a member of the professional staff of a community developmental center because it could impair his independence of judgment with respect to his professional decisions as a member of an individual habilitation team that recommends residential services, including group homes. Thus, Division (D) of Section 102.03 of the Revised Code prohibits a member of the professional staff of a community developmental center operated by the Department from serving as an employee of, or consultant to, a corporation that operates group homes under contract with the Department to provide residential services in the community for clients under the Department's jurisdiction.

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

(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 with which he is connected.

A member of the professional staff of a community developmental center operated by the Department is a "public official" as defined in Division (A) of Section 2921.01 of the Revised Code. A contract between the Department and a private corporation providing residential services for Department clients is a "public contract" as defined in Division (E)(1) of Section 2921.42 of the Revised Code. The corporation is a "business associate" of the staff members also

working as its employees or consultants (See: Advisory Opinion No. 78-006). Therefore, a member of the professional staff of a community developmental center operated by the Department is prohibited by Division (A)(1) of Section 2921.42 of the Revised Code from using the authority or influence of his office to secure authorization of a public contract between the Department and the corporation with which he serves as an employee or consultant to provide residential services for a Department client. In particular, he is prohibited from using the authority or influence of his position on an individual habilitation team to place a client in a group home operated by the corporation with which he serves.

Division (A)(4) of Section 2921.42 of the Revised Code prohibits a public official from having an interest in a public contract with the entity of government with which he is connected, even if he refrains from authorizing, voting, or otherwise using the authority or influence of his office to secure authorization of the contract in which he has an interest. Whether or not a public official has an "interest" in a contract with his own entity of government depends on the facts and circumstances of the particular case. However, many group homes may receive most, if not all, of their initial funding under the Department contract program, and mental health professionals may occupy significant positions with these group homes. In such cases, those mental health professionals also employed by the Department may have a prohibited interest in a public contract with the agency with which they are connected.

Your attention is also directed to Division (A) of Section 102.04 of the Revised Code, which prohibits a person appointed to an office or employed by an agency of the state from receiving compensation, other than from the agency with which he serves, for personal services rendered in any case, proceeding, application, or other matter before an agency of the state. Thus, a person employed by the Department is prohibited from receiving compensation, other than from the Department, for personal services rendered in any case, proceeding, application, or other matter before the Department or any other state agency. The exemption of Division (D) of Section 102.04 of the Revised Code would be applicable if the services are rendered on matters before state agencies other than the Department, provided certain criteria are met. However, it is not available on matters before the Department. Therefore, a member of the professional staff of a community developmental center operated by the Department is prohibited from receiving compensation from a corporation operating group homes that provide residential services to Department clients for personal services rendered on behalf of the group homes or clients as part of any case, proceeding, application, or other matter before the Department.

This advisory opinion is based on the facts presented, and is 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: (1) Division (D) of Section 102.03 of the Revised Code prohibits a member of the professional staff of a community developmental center operated by the Department of Mental Retardation and Developmental Disabilities from serving as an employee of, or consultant to, a corporation that operates group homes under contract with the Department to provide residential services in the community for clients under the Department's jurisdiction; and (2) Division (A)(1) of Section 2921.42 of the Revised Code prohibits a member of the professional staff of a community developmental center operated by the Department of Mental Retardation and Developmental

Disabilities from authorizing or using the authority or influence of his office to secure approval of the placement of Department clients in a group home operated by a corporation with which he serves as an employee or consultant.



Richard D. Jackson, Chairman
OHIO ETHICS COMMISSION