



OHIO ETHICS COMMISSION

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

Advisory Opinion Number 85-010
July 24, 1985

Syllabus by the Commission:

(1) Division (C) of Section 102.04 of the Revised Code prohibits a member of a city board of building appeals who is an architect or engineer from receiving compensation from a private client for personal services rendered on plans to be submitted to the city certified building department for approval.

(2) Division (A)(1) of Section 2921.42 of the Revised Code prohibits a member of a city board of building appeals who is an architect or engineer from 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.

(3) Division (A)(4) of Section 2921.42 of the Revised Code prohibits a member of a city board of building appeals who is an architect or engineer from having an interest in the profits or benefits of a public contract with the city with which he is connected.

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You asked whether the Ohio Ethics Law and related statutes prohibit a member of a city board of building appeals who is an architect or engineer from performing services for a private client and submitting the plans to the city certified building department for its approval. You also asked whether these statutes prohibit him from contracting to perform services for the city with which he is connected.

You stated, by way of history, that city boards of building appeals are certified pursuant to Section 3781.20 of the Revised Code. You stated further that architects or engineers who serve on city boards of building appeals usually maintain private businesses in which they perform services for clients. You asked whether an architect or engineer serving on a city board of building appeals would be prohibited from performing services for private clients whose plans require the approval of the city certified building department, or from performing services for the city with which he is connected.

Division (C) of Section 102.04 of the Revised Code provides the following:

Except as provided in Division (D) of this section, no person who is elected or appointed to an office of or employed by a county, township, municipal corporation, or any other governmental entity, excluding the courts, shall receive or agree to receive directly or indirectly compensation other than from the agency 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, department, board, bureau, commission, or other instrumentality, excluding the courts, of the entity of which he is an officer or employee.

A member of a city board of building appeals appointed pursuant to Section 3781.20 of the Revised Code is a person appointed to an office of a municipal corporation. Thus, an architect or engineer who is serving as a member of the city board of building appeals is prohibited by Division (C) of Section 102.04 of the Revised Code from receiving compensation from a private client for personal services rendered on any case, proceeding, application, or other matter before the city. This would include any preparation of plans to be submitted to the city certified building department for its approval.

Division (A) 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 a city board of building appeals is a "public official" as defined in Division (A) of Section 2921.01 of the Revised Code, since he is an appointed officer of a political subdivision of the state. The purchase or acquisition of architectural or engineering services by or for the use of the city is a "public contract" as defined in Division (E) of Section 2921.42 of the Revised Code. Thus, Division (A)(1) of Section 2921.42 of the Revised Code prohibits a member of a city board of building appeals from authorizing, voting, or otherwise using the authority or influence of his office to secure approval of a public contract for architectural or engineering services in which he, a family member, or a business associate has an interest. In addition, Division (A)(4) of Section 2921.42 of the Revised Code prohibits a member of a city board of building appeals from having an interest in the profits or benefits of a public contract for architectural and engineering services with the city with which he is connected, even if he refrains from using his authority or influence to secure the contract.

A member of a city board of building appeals who is an architect or engineer also would be subject to other prohibitions of the Ohio Ethics Law. For example, Division (A) of Section 102.03 of the Revised Code would prohibit him from representing a private client before the board or any public agency on any matter in which he personally participated as a public official or employee. Division (B) of Section 102.03 of the Revised Code would prohibit him from

releasing confidential information. Finally, Division (D) of Section 102.03 of the Revised Code would prohibit him from using his official position for personal gain or benefit.

The conclusions of this opinion are based on the facts presented, and are limited 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 (C) of Section 102.04 of the Revised Code prohibits a member of a city board of building appeals who is an architect or engineer from receiving compensation from a private client for personal services rendered on plans to be submitted to the city certified building department for approval; (2) Division (A)(1) of Section 2921.42 of the Revised Code prohibits a member of a city board of building appeals who is an architect or engineer from 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; and (3) Division (A)(4) of Section 2921.42 of the Revised Code prohibits a member of a city board of building appeals who is an architect or engineer from having an interest in the profits or benefits of a public contract with the city with which he is connected.


OHIO ETHICS COMMISSION
Robert Y. Farrington, Chairman