



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
8 EAST LONG STREET, SUITE 1200
COLUMBUS, OHIO 43215-2940
(614) 466-7090

Advisory Opinion Number 90-004
February 22, 1990

Syllabus by the Commission:

(1) Division (D) of Section 102-03 of the Revised Code does not prohibit a city council member whose spouse is the elected municipal court judge from voting, discussing, participating in deliberations, or otherwise using his official position to secure an appropriation from city council for the municipal court since the amount of a municipal court judge's compensation and the share payable by the city are statutorily established and the judge receives no definite and direct, private pecuniary benefit from the remainder of the appropriation for court accommodations, personnel, supplies, and services;

(2) Division (D) of Section 102.03 of the Revised Code does not prohibit a city council member whose spouse is the elected municipal court judge from voting, discussing, participating in deliberations, or otherwise using his official position to secure a general appropriation for health care benefits which are uniformly available for eligible municipal personnel even though his spouse's benefits are paid from this appropriation.

(3) Division (E) of Section 102.03 of the Revised Code does not prohibit the city council member whose spouse is the elected municipal court judge from continuing to receive city health care benefits he was receiving prior to his election and as a result of his spouse's position, until such time as the city council takes action which will alter the insurance program currently available.

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In your letter to the Ethics Commission you ask whether the Ohio Ethics Law and related statutes prohibit a newly elected member of city council from participating in the city councils annual appropriation to the local municipal court in light of the fact that the city council member's spouse serves as the full-time elected municipal court judge.

Divisions (D) and (E) of Section 102.03 of the Revised Code read as follows:

(D) No public official or employee shall use or authorize the use of the authority or influence of his office to secure anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties.

(E) No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties.

The term "public official or employee" is defined for purposes of R.C. Chapter 102. to include any person who is elected or appointed to an office of any board, commission, or authority of a city. See R.C. 102.01(B) and (C). A member of a city council is a "public official or employee" as defined for purposes of R.C. 102.03, and is, therefore, subject to the prohibitions of that Section. See Ohio Ethics Commission Advisory Opinions No. 76-005, 79-008, 80-007, 86-002, 88-004, and 89-008.

The term "anything of value" is defined for purposes of R.C. 102.03 in R.C. 1.03 to include money and every other thing of value. See R.C. 102.01(G). A definite, pecuniary benefit is considered to be a thing of value under R.C. 102.03. See Advisory Opinions No. 79-008, 85-006, 88-004, and 89-002. An appropriation to a public agency falls within the definition of "anything of value." See generally Advisory Opinion No. 88-002.

The Ethics Commission has held that a public official or employee is prohibited by R.C. 102.03(D) from using the authority or influence of his office to secure anything of value for himself or for another party, if the relationship between the public official or employee and the other party is such that his objectivity and independence of judgment could be impaired with regard to matters which affect the interests of that party. See Advisory Opinions No. 88-004, 88-005, 89-005, and 89-008. The Commission has held that R.C. 102.03(D) prohibits a city council member from participating in the city councils consideration of a matter where the council member's spouse would receive a definite and direct, private pecuniary benefit as a result of councils action. See Advisory Opinions No. 79-008, 84-010, 85-01 1, and 89-008. See also Advisory Opinions No. 85-006 and 88-004. The issue becomes whether the city's annual appropriation to the local municipal court will result in a definite and direct, personal pecuniary benefit to the council member's spouse who serves as the municipal court judge.

All municipal courts within the state of Ohio are created by statute. See R.C. 1901.01. The number of judges in each municipal court is also statutorily established. See R.C. 1901.08. The amount of a municipal court judge's compensation and the sources from which it is paid are fixed by statute. See R.C. 1901.11. The responsibility for payment of a full-time municipal court judge's compensation is divided between the county and the city where the court is located, with three-fifths of the amount being payable by the city and the remaining two-fifths payable by the county. See R.C. 190 1.1 l(B) and (C). Municipal court judges also receive an additional payment from the state treasury. See R.C. 141.04 (A)(5). See also Ohio Op. Att'y. Gen. No. 88-014. You have stated that the judge receives her compensation in the form of a separate check from each source. The municipality's share of the judge's compensation is determined by the statutory formula described above and appears as a line-item in the city councils annual appropriation to the municipal court. The city council is statutorily permitted to procure liability insurance for municipal court judges and employees, and appropriate funds for the premiums. See R.C. 1901.38. See also R.C. 1901.03(B). You have stated, however, that the city council does not provide liability insurance for the municipal court judge and therefore the city councils

annual appropriation to the municipal court does not include the cost of the judge's liability insurance.

It is apparent that the municipal court judge receives a definite and direct private pecuniary benefit from the receipt of compensation for the performance of her duties; however, the city has the statutory duty to provide a specific amount set forth by statute as part of this compensation. See State ex rel. Cleveland Municipal Court v. City Council 34 Ohio St. 2d 120, 125 (1973). The city council has no discretion to determine the amount of the municipal court judge's compensation. Therefore, the affected city council member's objectivity and independence of judgement could not be impaired by his participation in the city councils annual appropriation to the municipal court on the basis that the judge's compensation is included as a line-item in the appropriation.

The legislative authority of a municipal court, which is the city council in this instance, see R.C. 1901.03(B), is also statutorily required to provide, or provide payments for, accommodations, law books, employees, supplies, and services for the municipal court and its officers. See R.C. 1901.36. See also R.C. 1901.31 (payments for clerk of court and deputy clerks); R.C. 1901.32 (bailiffs and deputy bailiffs); and R.C. 1901.33 (court aides). The issue is whether the municipal court judge would receive a definite and direct, private pecuniary benefit as a result of the city councils provision of or payment for, accommodations, law books, employees, supplies, and services for the court. In Advisory Opinion No. 89-002, the Ethics Commission held that the receipt of a thing of value by and for the use of a public agency is not of such character as to manifest an improper influence on the officials and employees of that agency so long as no official or employee of the agency benefits personally. By extension, the receipt of accommodations, personnel, and supplies by the public agency with which the spouse of a city council member serves is not of such character as to manifest an improper influence upon the city council member.

It is apparent from the statutory language in R.C. 1901.36 that the accommodations, law books, employees, supplies, and services are provided to the municipal court by the legislative authority for the use of the judge and court personnel to facilitate the administration of justice by the municipal court. See M.C. Sup. R. 17. While it is possible that a municipal court judge's workload may be eased and the functioning of her court expedited by a generous appropriation of funds from the legislative authority, city councils appropriation to the municipal court for necessary accommodations, personnel, and supplies will not provide a definite and direct, personal pecuniary benefit to the judge. Since the exercise of city councils discretion concerning the appropriation of funds for accommodations, law books, employees, supplies, and services is for the benefit of the court and not for the definite and direct, personal pecuniary benefit of the judge, the city council member is not prohibited from participating in city councils consideration of the appropriation to the municipal court. See Advisory Opinions No. 85-006 and 88-004. R.C. 102.03(D) does not prohibit the city council member from voting, discussing, participating in deliberations or otherwise using his official authority to secure the city's annual appropriation to the municipal court.

You have also asked whether the Ethics Law and related statutes will impose prohibitions or conditions on the city council member due to the fact that the city provides health care

benefits for the municipal court judge and the city council member personally receives health care benefits through his spouse's family coverage. You state that the city pays one hundred per cent of the health care benefits for eligible city officers and employees with no contribution being paid by the officer or employee. You state that the municipal court judge is included within the class of people eligible to receive health care benefits from the city with no contribution; however, city council members are not included within this class but are given the opportunity to purchase health care benefits through the city. You also state that the health care benefits for the city's officers and employees are paid out of the city's general services account. The appropriation for general services is separate from the appropriation for the municipal court.

As explained above, a city council member is prohibited from participating in a decision that will provide a definite and direct personal pecuniary benefit to his spouse. The cost of the premiums of health insurance and the protection which the insurance affords are "things of value" for purposes of R.C. 102.03. In the instant situation, the judge is currently receiving health care benefits from the city and the city council is merely appropriating money to fund benefits being provided to all eligible city officials and employees. The approval of a general appropriation to fund uniform health care benefits currently being provided to city officers and employees differs considerably from a decision by the city council to provide benefits to an individual employee or a class of employees who are not currently receiving or eligible for such benefits. The Ethics Commission has held that the standard in judging whether a city council member is prohibited from participating in a matter is whether the matter before council would provide such a definite and particular benefit for the council member or for someone with whom he has a close relationship such as a family member, that these private interests could impair his independence of judgment or unbiased discretion in making his official decisions. See Advisory Opinions No. 88-004 and 89-008. In this instance, the decision has already been made by city council to provide insurance coverage, at no cost, to eligible municipal personnel and to include the municipal judge in the group eligible for insurance; the city council member in question was not a member of council when those decisions were made. The issue before council at this time concerns merely the level of funding which is necessary to carry out those decisions previously made. It cannot be said that this funding decision provides such a definite and particular benefit for the council member's spouse that the council member's objectivity and independence of judgment could be impaired. An analogous situation was addressed by the Commission in Advisory Opinion No. 82-003 in which the Commission held that an individual teacher did not have a sufficiently definite and direct interest in a master contract between the school district and the teachers' union so as to prohibit the teacher's spouse who was a school board member from voting on the master contract under R.C. 2921.42. (See discussion below of the inapplicability of R.C. 2921.42 to the instant situation.) Therefore, since the judge currently receives health care benefits which are uniformly available to all eligible city officers and employees, R.C. 102.03(D) does not prohibit the city council member from voting upon the general services appropriation even in light of the fact that his spouse's health care benefits would be funded through the appropriation.

The issue remains, however, whether the city council member may personally receive health care benefits as a result of his spouse's position as municipal court judge. The Ethics Commission addressed a similar issue under R.C. 2921.42, which prohibits a public official from having an interest in a "public contract" with his own political subdivision, and held that a public

official was prohibited by R.C. 2921.42 from deriving a direct pecuniary benefit as a result of his spouse's employment with the same political subdivision. See e.g., Advisory Opinion No. 85-003 (concluding that R.C. 2921.42(A)(4) would prohibit the spouse of a county engineer from being employed by the county, where the county engineer, as a result of his spouse's proposed employment, would receive health insurance coverage that is not otherwise available to him as county engineer). See also R.C. 2921.42(A)(3) (a public official may not profit from the prosecution of a public contract authorized by him or by a board of which he was a member at the time of authorization, and not let by competitive bidding or let by competitive bidding in which his is not the lowest and best bid.) However, R.C. 2921.42 is applicable to a situation where the spouse of a public official holds employment pursuant to a "public contract." A municipal court judge is elected to office for a period of six years. See R.C. 1901.07. The Ethics Commission has held that an elected public official holds office and is granted compensation by virtue of law and not pursuant to contract. See Advisory Opinions No. 83-008, 85-002, 85-015, and 86-010. Therefore, R.C. 2921.42 does not apply in the instant situation. See Advisory Opinion No. 83-008.

Division (E) of Section 102.03 does, however, prohibit a public official from soliciting- or receiving anything of value that is of such character as to manifest a substantial and improper influence upon him with respect to his duties. R.C. 102.03(E) does not require that the public official or employee use the authority or influence of his position to secure the thing of value and prohibits the public official or employee from merely accepting anything of value if it could impair his objectivity and independence of judgment with regard to his official decisions and responsibilities. See Advisory Opinions No. 87-008, 89-003, and 89-006. The application of R.C. 102.03(E) is dependent on the facts and circumstances of each individual situation. See Advisory Opinion No. 87-008. The issue becomes whether a newly elected city council member who has received coverage through his spouse's family plan before taking office could be subject to impaired objectivity and independence of judgment with regard to his official decisions and responsibilities if he continued to receive the coverage through his spouse's family plan.

As stated above, the members of city council, unlike the municipal court judge, do not have the opportunity to receive health care benefits without a required contribution, but must purchase such coverage if they desire to avail themselves of health care benefits. However, the newly elected city council member had received health care benefits through his spouse's family plan before being elected, and taking office. If there has been no action by city council to alter the insurance program, including costs, coverage, or benefits, since the council member took office, and the city council member continues to receive the identical coverage and benefits at the same cost that he had received on his spouse's family plan prior to taking office, then it is apparent that the receipt of such coverage is not of such character as to manifest a substantial and improper influence upon him with regard to his duties by impairing his objectivity and independence of judgment. Therefore, assuming that city council has taken no action with regard to the conditions or provision of the health care benefits available to eligible personnel since the city council member has taken office, R.C. 102.03(E) would not prohibit the city council member from continuing- to receive health care benefits through his spouse's family coverage. R.C. 102.03(E) would not prohibit the city council member from continuing to receive such coverage until such time as the city council takes action which alters the program currently available, to either the benefit or detriment of the eligible beneficiaries.

You have also asked whether the city council member may serve as chairman of the Health and Safety Services Committee in light of the fact that his 'spouse is the elected municipal court judge and that the staff liaisons with the Committee, the city health director, and the police and fire chiefs, have a close association with, and may periodically be interested in matters before the municipal court.

In the instant situation, the three individual liaisons are the parties who may be interested in matters before the court. The potential for a conflict of interest on the basis that the liaisons may be interested in matters before the agency of the council member's spouse is so remote that the city council member's service on the committee would not be of such character as to manifest a substantial and improper influence upon him with respect to his duties. See Advisory Opinion No. 88-005. Therefore, the city council member is not prohibited from serving as the chairman of the Health and Safety Services Committee.

A municipal court judge is also an elected public official and subject to the provisions of the Ohio Ethics Law and related statutes. See R.C. 102.01(B) and (C) and R.C. 2921.01(A). However, a municipal court judge is not under the purview of the Ohio Ethics Commission. See R.C. 102.01(F)(2); see also Advisory Opinion No. 76-003. Therefore, you or the interested parties may wish to contact the Board of Commissioners on Grievances and Discipline of the Supreme Court concerning possible restrictions placed upon the judge's conduct with regard to the issues raised in this advisory opinion.

This advisory opinion is based on the facts presented, and is limited to questions arising under Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code, and does not purport to interpret other laws or rules.

Therefore, it is the opinion of the Ethics Commission, and you are so advised, that: (1) Division (D) of Section 102.03 of the Revised Code does not prohibit a city council member whose spouse is the elected municipal court judge from voting, discussing, participating in deliberations, or otherwise using his official position to secure an appropriation from city council for the municipal court since the amount of a municipal court judge's compensation and the share payable by the city are statutorily established and the judge receives no definite and direct, private pecuniary benefit from the remainder of the appropriation for court accommodations, personnel, supplies, and services; (2) Division (D) of Section 102.03 of the Revised Code does not prohibit a city council member whose spouse is the elected municipal court judge from voting, discussing, participating in deliberations, or otherwise using his official position to secure a general appropriation for health care benefits which are uniformly available for eligible municipal personnel even though his spouse's benefits are paid from this appropriation; and (3) Division (E) of Section 102.03 of the Revised Code does not prohibit the city council member whose spouse is the elected municipal court judge from continuing to receive city health care benefits he was receiving prior to his election and as a result Of his spouse's position, until such time as the city council takes action which will alter the insurance program currently available.



David L. Warren, Chairman
Ohio Ethics Commission