



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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Advisory Opinion Number 90-011
August 16, 1990

Syllabus by the Commission:

Division (D) of Section 102.03 of the Revised Code does not prohibit a city council member from participating in a matter presented to council by a former client of his law firm or law partner, even though his law partner had previously represented the client before council on that matter, so long as there is no ongoing relationship between the party and his law firm or law partner, and no understanding that the attorney-client relationship will be resumed at some time in the future, and so long as the council member would not be required to review, approve, base his decision upon, or otherwise act upon legal work or services previously performed by his law firm or law partner.

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You have asked whether the Ethics Law and related statutes would prohibit your law partner, who is a city council member, from participating in the consideration of, and vote on, a request for a zoning variance presented by a party who was formerly represented by you before council on this request.

You have stated, by way of history, that you are a partner in a law firm, and that you represented a client before city council on a variance request that was twice presented and subsequently rejected by council. Your partner in the law firm is a member of city council, and abstained from voting, discussing, or deliberating on the requested variances. You have asked whether your law partner would be prohibited from participating as a city council member on the issue of the variance if it is again presented to council, where you and your law firm have withdrawn from representing the client. You have clarified that you have referred the variance issue, as well as a related zoning issue, to another attorney, and that your firm has no matters remaining with respect to this client.

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 or employment to secure anything of value or the promise or offer of 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 to include any person who is elected or appointed to an office of a city. See R.C. 102.01(B) and (C). A member of a city council is a "public official or employee" for purposes of R.C. 102.03. See Advisory Opinions No. 79-008, 89-008, and 90-008. The term "anything of value" is defined for purposes of R.C. 102.03 to include money and every other thing of value. See R.C. 102.01(G) and R.C.1.03. Client fees generated by the practice of law fall within the meaning of "anything of value." See Advisory Opinions No. 86-004, 89-015, 89-016, and 90-008.

In Advisory Opinion No. 89-016, the Ethics Commission held that a member of a public board or commission who is also a partner or associate in a private law firm is prohibited by R.C. 102.03(D) from voting, discussing, participating in deliberations, or otherwise using his official position, formally or informally, with regard to matters pending before his public body on which a member of his law firm is representing a client. This conclusion was reiterated in Advisory Opinion No. 90-008, in which the Commission held that R.C. 102.03(D) prohibits a city council member who is employed by a private law firm from participating in a matter pending before city council if an employee or partner of his law firm is representing a client on that matter pending before council. See also Advisory Opinion No. 86-004. The Commission also held in Advisory Opinions No. 89-016 and 90-008 that a city council member or other official serving on a public body is prohibited by Division (E) of Section 102.03 from receiving a distributive share of client fees earned by members of his law firm for representing a client on matters pending before council or his public body.

In this instance, you had previously represented a client before city council, and your partner abstained as a member of city council from participating on that matter. You wish to know whether your partner would continue to be prohibited from participating in the client's variance request if you and your law firm have withdrawn from representing the party before council. You have stated that a related matter involving the party has also been referred to another attorney and that the firm no longer represents the party with respect to any matter.

The Ethics Commission has held that R.C. 102.03(D) prohibits a public official or employee from participating in any matter where the public official or employee would have an inherent conflict of interest such that his objectivity and independence of judgment with regard to his official decisions and responsibilities could be impaired. See Advisory Opinions No. 84-009, 85-006, 88-004, and 88-005. It is apparent that a council member would have an inherent conflict of interest in participating in a matter where his law partner or a member of his law firm is representing a party before council See Advisory Opinions No. 89-016 and 90-008. The possibility that a council member would have a conflict of interest merely because a party appearing before council had formerly been a client of his law firm or law partner is, however, much more remote. See Advisory Opinions No. 88-005 and 88-009. Cf. Advisory Opinion No. 90-008 (R.C. 102.03(D) does not generally prohibit a city council member from participating in a matter pending before city council which is brought by a party who is a client of the council member's law firm, but is not represented by the law firm on the matter pending before council). Therefore, the council member is not prohibited by R.C. 102.03(D) from participating in a matter presented to council by a former client of his law firm or law partner.

The Ethics Commission has held, however, that a public official is prohibited by R.C. 102.03(D) from reviewing, in his official capacity, work prepared by members of his private

firm. See Advisory Opinions No. 82-001, 83-001, 84-004, 88-009, 89-016, and 90008. A city council member's objectivity and independence of judgment could be impaired if he were to review and act upon matters in which members of his law firm had earned legal fees. See Advisory Opinion No. 90-008. Therefore, Division (D) of Section 102.03 would prohibit a council member from participating in a matter in which a member of his law firm has prepared documents, provided legal consultation or advice, or provided other legal services which he would be required to review and act upon in his official capacity.

You have stated that, in this instance, you represented the client twice before council on a zoning variance. If the party were to bring the matter to council again, after you have withdrawn from representing that party, the council member would not necessarily be prohibited from participating in that issue merely because you previously represented the party before council on that same matter. However, the council member would be prohibited from participating in councils determination of the party's request for a variance if he would be required to review, approve, base his decision upon, or otherwise act upon, legal work or services you previously performed as attorney for the party.

It must also be noted that the Commission's conclusion that your law partner is not prohibited by R.C. 102.03(D) from participating as a council member in matters affecting the interests of your former client are conditioned on the assumption that there is no on-going relationship between you or the law firm, and the client, and there is no understanding that you or the firm will, at some time in the future, resume an attorney-client relationship with the party.

As a final matter, you should be aware that your question may also raise issues concerning the professional conduct of attorneys under the Code of Professional Responsibility. These issues are not within the jurisdiction of the Ethics Commission, but should be referred to the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court.

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 Ohio Ethics Commission, and you are so advised, that, Division (D) of Section 102.03 of the Revised Code does not prohibit a city council member from participating in a matter presented to council by a former client of his law firm or law partner, even though his law partner had previously represented the client before council on that matter, so long as there is no ongoing relationship between the party and his law firm or law partner, and no understanding that the attorney-client relationship will be resumed at some time in the future, and so long as the council member would not be required to review, approve, base his decision upon, or otherwise act upon legal work or services previously performed by his law firm or law partner.


David L. Warren, Chairman
Ohio Ethics Commission