



**OHIO ETHICS COMMISSION**  
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Advisory Opinion Number 98-001  
April 9, 1998

Syllabus by the Commission:

- (1) Conflict of interest provisions contained in Ohio's Ethics Law, within Divisions (D) and (E) of Section 102.03 of the Revised Code, do not prohibit a village clerk-treasurer from authorizing or participating in matters involving the deposit of public funds with a bank with which she has an "ordinary customer" relationship;
- (2) For purposes of Divisions (D) and (E) of Section 102.03 of the Revised Code, a public official or employee is an "ordinary customer" of a bank if her business relationships with the bank are subject to fixed terms that are available to all other eligible bank customers, unless any one of the four factors listed below exists;
- (3) Four factors that indicate that a public official or employee is not an "ordinary customer" of a bank are: (a) the public official or employee is negotiating a loan with the bank, or she has existing loan agreements with the bank on terms that vary significantly from those offered to other borrowers; (b) the total amount of the official's or employee's deposits or investments (such as certificates of deposit or individual retirement accounts) exceed the maximum amount eligible for coverage by federal deposit insurance; (c) the official or employee is employed by the bank or has any ownership interests in, or fiduciary relationships with, the bank; or (d) there is any extraordinary circumstance involved in the business relationship between the public official or employee, the public agency she serves, and/or the bank, as is further discussed herein;
- (4) Neither Division (A)(1) nor (A)(2) of Revised Code Section 2921.42 prohibit a village clerk-treasurer from authorizing a public contract to, or authorizing the investment of public funds with, a bank with which she has a business relationship that is limited to that of an "ordinary customer" relationship, as defined above. Revised Code Section 2921.42 may prohibit a village clerk-treasurer from taking such actions, if the clerk-treasurer or her family has additional ownership or fiduciary relationships with the bank;
- (5) An "ordinary customer" of a bank, as defined above, is not a "business associate" of the bank for purposes of the prohibitions contained in Division (A)(1) and (A)(2) of Revised Code Section 2921.42.

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You have stated that you are a Village clerk-treasurer and that you are currently examining investments for Village funds. Your usual investments are low-risk treasury bills and Certificates of Deposits. You have stated that you have several personal accounts with a local bank (Bank), consisting of a checking account, a savings account, a Certificate of Deposit (CD), and an Individual Retirement Account (IRA). You have stated that your accounts, which qualify for federal deposit insurance, do not exceed the maximum insured amount. You would like to consider the investment of Village funds with the Bank, if they are competitive with other financial institutions. You have asked for a review, under the Ethics Law and related statutes, of your ability to participate in the Village's consideration of a business relationship with the Bank, because of your personal accounts with the Bank. This opinion will consider your question with respect to banks, but the conclusions would apply equally to any other type of financial institution, such as a savings and loan.

### **Duties of the Village Clerk-Treasurer**

In order to answer your questions, it is necessary to examine the duties of a village clerk-treasurer. The executive power of a village is vested in several officers and departments, including the clerk and the treasurer, which are elected offices. R.C. 733.23, 733.26, and 733.42. Pursuant to R.C. 733.261, the legislative authority of a village may combine the duties of the clerk and the treasurer into one office, known as the clerk-treasurer, which is also an elected office. A clerk-treasurer performs the duties provided by law for both the clerk and the treasurer, and all laws that pertain to either the clerk or treasurer apply to the clerk-treasurer. R.C. 733.261(C).

The duties of a village clerk-treasurer, therefore, include all duties prescribed for a village clerk, as follows: attending all meetings of the legislative authority of the village and keeping a record of its proceedings and of all rules, bylaws, resolutions, and ordinances passed or adopted (R.C. 733.27); keeping the books of the village that exhibit accurate statements of all moneys received and expended, of all the property owned by the village and the income derived therefrom, and of all taxes and assessments (R.C. 733.28); and, in noncharter villages, collecting and depositing income taxes to the village treasury, and enforcing and administering the village's income tax ordinances, resolutions, and rules (R.C. 733.85).

The duties of a village clerk-treasurer also include all duties prescribed for a village treasurer, as follows: keeping an accurate account of all moneys received and disbursements made, organizing the village account books so that the amounts received and paid on separate funds are exhibited in separate accounts, and performing such duties as are required by village ordinance (R.C. 733.43); demanding and receiving levied taxes, assessments, judgments, fines, penalties, forfeitures, licenses, costs taxed in mayor's court, and other debts due the village, and disbursing the funds on the order of any person who is authorized by law to issue such order (R.C. 733.44); accounting to the legislative authority on a quarterly basis, reporting the condition of the village finances, and exhibiting the balance due each fund that came into her hands during the year (R.C. 733.45); receiving and disbursing all village funds (R.C. 733.46); and delivering all moneys, books, papers, and other property when leaving office (R.C. 733.47).

The village clerk-treasurer is also the treasurer of the village for purposes of the Uniform Depository Act. The Uniform Depository Act prescribes additional duties of a treasurer, as follows: awarding interim deposits of public moneys (R.C. 135.09); investing or depositing any

part or all of the interim moneys, entering into written repurchase agreements, safekeeping all documents evidencing a deposit or investment acquired by her, transferring and delivering all documents to her successor, and presenting investments or deposits for payment when they become due and payable (R.C. 135.14); investing in linked deposits as authorized by ordinance (R.C. 135.141); and keeping a cash reserve in the vaults of her office (R.C. 135.17).

**Securing, Soliciting, or Accepting a Thing of Value--R.C. 102.03(D) and (E)**

This opinion will first consider whether the Ohio Ethics Law and related statutes prohibit you from investing Village moneys in a Bank with which you have several personal accounts.

Conflict of interest provisions of Ohio's Ethics Law, contained in Divisions (D) and (E) of Revised Code Section 102.03, provide as follows:

(D) No public official or employee shall use or authorize the use of the authority or influence of 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 the public official or employee with respect to that person's 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 the public official or employee with respect to that person's duties.

The term "public official or employee" is defined for purposes of Chapter 102. of the Revised Code in R.C. 102.01(B) as "any person who is elected or appointed to an office or is an employee of any public agency." The term "public agency" is defined in R.C. 102.01(C) to include a village. A village clerk-treasurer is, therefore, a "public official or employee," and is subject to the provisions of R.C. 102.03(D) and (E).

R.C. 102.03 defines the term "anything of value" for purposes of R.C. 102.03 to include money, goods and chattels, promissory notes, a promise of future employment, and every other thing of value. R.C. 102.01(G). A definite pecuniary benefit is considered to be a thing of value under R.C. 102.03(D) and (E). Ohio Ethics Commission Advisory Opinions No. 85-006, 85-011, and 86-007. A public contract or the investment of public funds are, therefore, things of value for purposes of R.C. 102.03(D) and (E).

R.C. 102.03(D) and (E) prohibit a public official or employee from soliciting, accepting, or using the authority or influence of her public position to secure anything of value that could have a substantial and improper influence upon her with respect to her public duties. Adv. Op. No. 88-005. Additionally, R.C. 102.03(D) and (E) prohibit a public official or employee from soliciting, accepting, or using the authority or influence of her public position to secure a thing of value, including the deposit of public funds, which would have a direct and definite benefit upon an entity with which she has a close family or financial relationship, such as a business associate, because the relationship could impair the official's independence of judgment on behalf of the public. Adv. Ops. No. 92-008 and 93-001.

The question of whether R.C. 102.03(D) and (E) prohibit you, as the Village clerk-treasurer, from authorizing or participating in the investment of public funds with the Bank is,

therefore, dependent upon whether: (1) you, as a Bank customer, could receive a definite and direct benefit from the Village depository agreements; or (2) you, as Village clerk-treasurer, would be impaired in your decisions about the Bank because you have a significant financial relationship with the Bank. If you could receive a definite and direct benefit from the Village's contract with the Bank, or the relationship between you and the Bank is such that your objectivity could be impaired by the definite and direct benefit the Bank would receive from the Village's deposits, then you are prohibited from taking any action as clerk-treasurer to invest Village funds with the Bank.

### **"Ordinary Customer"**

When examining potential conflicts of interest, the Commission has stated that a public official must consider all of the facts and circumstances of the particular situation in order to determine whether an actual conflict of interest exists, and that no one factor is determinative. Adv. Op. No. 91-004. The relationship between a public official and a bank with which she is a customer is one that could present a conflict of interest for the official when she is making decisions that affect the financial interests of the bank, and is dependent upon the circumstances of the relationship.

To protect the public against the personal conflict of interest of the public official, the official must examine the entirety of her relationship with the bank to determine whether she could receive an improper personal benefit from decisions that she must make, as a public official, that will affect the bank. The public official must also examine all of her customer relationships with the bank and determine whether her relationships are such that her ability to make an objective decision for her public agency would be hampered by any benefit the bank would receive.

The mere fact that a public official has a financial relationship with a bank does not, in and of itself, mean that the relationship will impair the official's independence of judgment with respect to matters that affect the bank. Public officials and employees, like most other citizens in today's society, invariably must have consumer relationships with financial institutions. These relationships will be of varying kinds, and will involve varying amounts of money and obligations. Some, but not all, of these relationships may be of such a character as to improperly influence a public official with respect to decisions the official must make about the bank.

Financial relationships that are essentially the same as those the bank retains with other customers, and do not, under their particular facts and circumstances, suggest the possibility of discretionary favoritism by the financial institution in favor of a public official or employee should not be summarily prohibited by conflict of interest provisions. These types of financial relationships may have little, if any, improper effect upon a public official or employee who must make decisions as a fiduciary for the public agency. On the other hand, financial relationships between a bank and a public official or employee that involve the discretion of the bank to entertain the financial relationship with the official on grounds unique from others may well create an improper influence upon the official or employee in implementing the public's interest rather than his own. In selected circumstances, the offer by a bank of an account relationship unavailable to other customers to a public official, who has a public responsibility with respect to the bank, may contravene additional ethics restrictions. See R.C. 102.03(F) and R.C. 2921.43(A).

The key to resolving a review of these relationships is to identify those factors in a financial relationship that demonstrate that the public official or employee is an "ordinary customer" of the bank, and is less likely to be influenced by the financial relationship, as distinguished from those factors that demonstrate that the financial relationship has the propensity to improperly influence the public official or employee.

Factors that indicate that a person has an "ordinary customer" relationship with a bank are: (1) that the relationship is subject to fixed terms; and (2) that the same terms are available to all other eligible bank customers. A public official who is an "ordinary customer" of the bank has a relationship with the bank that would not improperly influence her in the performance of her duties with respect to the bank. R.C. 102.03(D) and (E) do not prohibit a public official who is an "ordinary customer" of the bank from participating in matters affecting the bank. If the public official has a relationship with the bank that is not subject to fixed terms, or the same terms are not available to all other eligible bank customers, the official would not be an "ordinary customer" of the bank, and could receive a benefit from transactions with the bank, or could be influenced by the bank's interest in the transactions. R.C. 102.03(D) and (E) prohibit a public official who is not an "ordinary customer" of a bank from participating in matters affecting the bank.

To determine when the relationship between a bank and a particular customer is that of an "ordinary customer," i.e., is subject to fixed terms, where the same terms are available to all other eligible customers, there are four factors that should be examined. The existence of any one of these four factors will indicate that the relationship between the official and the bank is not an "ordinary customer" relationship.

### **Distinguishing Factors**

First, the official must consider her indebtedness to the bank. If the official has loans from the bank, and the terms that she receives are more beneficial than terms normally offered by the bank to other customers having similar income, assets, and debts, this would clearly indicate that the official's relationship with the bank is not that of an ordinary customer. In addition, if the official is in the process of negotiating a loan from the bank, at the same time that public investments are being considered or approved, the official's relationship with the bank is not fixed, and therefore, is not that of an ordinary customer.

Second, the public official must consider whether the total of all of her deposits with the bank, including her investment deposits (such as certificates of deposit and individual retirement accounts), exceed the maximum amount subject to reimbursement by federal deposit insurance. The federal deposit insurance program provides protection for accounts placed with banks, including investment accounts. If an official has such sizable deposits with a bank that they are not secured by federal deposit insurance, she may be more inclined to make her investment decisions on behalf of her public agency based on her concerns for the bank's financial well-being, and thereby her own financial interests, rather than the financial interests of her public agency.

The third consideration is whether the public official has any employment, ownership, or fiduciary relationship with the bank. An individual with ties to a bank of this kind is not an "ordinary customer" of the bank. A public official with personal financial or fiduciary ties to a

private institution may be influenced by these ties, and the benefit that may ensue therefrom, rather than by concerns for the public agency she serves. See Adv. Op. No. 92-008 (discussing the Ethics Law restrictions on officials who are employees or board members of depository banks) and 93-001 (discussing the Ethics Law restrictions on officials with ownership interests in depository banks). In addition, R.C. 2921.42(A)(1) and (2) (discussed below) prohibit a public official from participating in contracting with a bank in which she, her family, or her business associates have a financial or fiduciary interest.

Finally, the public official must determine whether there are any extraordinary circumstances attendant to her relationship with the bank. If there is some unusual aspect of the relationship between the official and the bank, this would indicate that the public official is not an ordinary customer of the bank. For example, if the bank extends credit to the official despite the official's unstable credit history, when the bank would not normally extend the credit, this would be an extraordinary circumstance, not included within the other variables, that would indicate that the official is not an ordinary customer of the bank. Also, if the public official and the bank were to agree the official would be rewarded, after the deposits were placed with the bank, by changes in the terms extended to the official, or if such a change were to take place as a result of the actions of an official, this would be an unusual aspect of the relationship and would indicate that the official is not an ordinary customer of the bank. In addition, such actions could implicate other criminal provisions of state law beyond the Ethics Law.

The answers to these questions determine whether a customer's relationship with a bank is different from the relationships that other customers have with the bank, and whether she may benefit from contracts between the bank and her public agency, or may be influenced by the bank's interests. As stated above, the existence of any one of these factors would indicate that the public official could benefit, or be influenced by the bank's interests. R.C. 102.03(D) and (E) would then prohibit her as a public official or employee from participating in matters affecting the bank.

### **Application of Factors**

Applying these factors to your question, you have stated that your relationships with the Bank include your checking account, a savings account, a CD, and an IRA. You have not stated whether you have a debtor/creditor relationship with the bank. Generally, checking and savings accounts are cornerstone accounts for individuals in their relationships with banks. These accounts usually have fixed interest rates and pre-set charges for services. The differences in the interest rates and charges for services between banks that offer such accounts are usually nominal. Investment opportunities and IRAs, as well as the rates of return available on these types of investments, may vary from bank to bank, but again, these differences may also be nominal. Banks generally offer the same investment and IRA terms to all of their customers. You have stated that your accounts do not exceed the maximum for federal deposit insurance. From the information that you have provided, it is unlikely that the Bank in your Village is providing you with any terms that are significantly different from those it would provide to other eligible customers, or that could be provided by other banks in the Village. Finally, you have not indicated that any extraordinary circumstances exist with respect to your relationship with the bank.

The relationship you describe with the Bank does not reveal any factors that would suggest that you are not an "ordinary customer" of the bank, that you would receive a definite and direct benefit from the placement of Village deposits with the Bank, or that your objectivity with respect to the placement of Village accounts with the Bank would be impaired by your financial relationship with the Bank. Based upon the factors that you have described, R.C. 102.03(D) and (E) would not prohibit you from taking any action that might result in a benefit to the Bank, such as placing Village deposits with the Bank.

If, however, any one of the factors listed above is also present in your relationship with the Bank, you would not be considered an "ordinary customer" of the bank. If you are not an ordinary customer of the bank, you could benefit directly from the Village business with the Bank and your judgment could be impaired by your interests, or the interest of the Bank in receiving the Village's deposits, then R.C. 102.03(D) and (E) would prohibit you from authorizing or participating in the placement of Village deposits with the Bank.

### **Other Cautions to Consider**

Once a public official or employee has determined that she is an "ordinary customer" of the bank, there are additional inquiries that the official should make with respect to her investment relationship to the bank, or other ties to the bank that she or her family may have.

### **Clerk-Treasurer Having an Interest in a Village Contract -- R.C. 2921.42**

Additional prohibitions, set forth in public contract restrictions of the law, contained in R.C. 2921.42(A)(1), (2), and (4), also apply to the question you have raised because of the Village's potential purchase of services from the Bank. R.C. 2921.42(A)(1), (2), and (4) prohibit a public official from knowingly doing 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;
- (2) Authorize, or employ the authority or influence of his office to secure the investment of public funds in any share, bond, mortgage, or other security, with respect to which he, a member of his family, or any of his business associates either has an interest, is an underwriter, or receives any brokerage, origination, or servicing fees:
- ...
- (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.

The term "public official" is defined, in R.C. 2921.01(A), to include any elected or appointed officer of the state or of any political subdivision of the state. An elected officer, including a village clerk-treasurer, is a "public official" for purposes of the definition in R.C. 2921.01, and is subject to the prohibitions in R.C. 2921.42(A)(1), (2), and (4).

A "public contract" is defined in R.C. 2921.42(G) as the purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of the state or any of its political subdivisions. The Ethics Commission has previously determined that the deposit of public funds by a political subdivision in a bank that serves as a public depository is a public contract. Adv. Ops. No. 85-007 and 92-008. The deposit of Village funds in a local Bank is, therefore, a public contract.

Divisions (A)(1), (2), and (4) of Revised Code Section 2921.42 prohibit a public official or employee from, respectively, authorizing a public contract in which she has an interest, authorizing the investment of public funds in a share, bond, mortgage, or other security in which she, or a family member, has an interest, and having an interest in a public contract with the public agency that she serves. (R.C. 135.11 provides an exception to some of these prohibitions for individuals who are officers, directors, stockholders, employees, or owners of any interest in a public depository. The exception in R.C. 135.11 does not apply in this situation, since you do not fall into any of the categories in the exception.) The question at issue, then, is whether you, as a customer of the Bank, have an interest in the Bank's contracts, such that the prohibitions of R.C. 2921.42(A)(1), (2), or (4) would arise.

An "interest" that is prohibited under R.C. 2921.42, like those prohibited by R.C. 102.03, must be definite and direct and may be either pecuniary or fiduciary in nature. Adv. Op. No. 81-008. Examples include a finder's fee, a sales commission, or other pecuniary remuneration. A public official who receives such a direct benefit from a public contract would have an interest in the contract. Adv. Ops. No. 84-014 and 93-014; see also R.C. 2921.43(A). If you, or a member of your family, were to receive such a direct benefit from the placement of Village deposits with the Bank, you would have a prohibited interest in the Village's contracts, and would also be prohibited from participating in the placement of Village deposits with the Bank. See State v. Strabala, No. 94-C-22 (CP, Columbiana 8-30-94). (Receipt of a direct benefit from the placement of Village deposits with the Bank would also be prohibited by R.C. 102.03(D) and (E), as discussed above.) However, none of the facts that you have provided suggest this kind of direct benefit.

You have a personal customer relationship with the Bank. If you are an "ordinary customer" of the Bank, as that term is described above, you, along with the other ordinary customers, may indirectly benefit if the Bank is awarded public contracts, because the Bank may be more productive and profitable. In turn, your investments and other accounts may be more stable and secure. However, this benefit is not definite and direct. Instead, it is somewhat remote and speculative, and would not invoke the prohibitions of R.C. 2921.42. See Adv. Op. No. 81-008 (an "interest" in a public contract, as prohibited by R.C. 2921.42, must be definite and direct) and Adv. Op. No. 86-002. If, however, you are not an ordinary customer, i.e., if your relationships with the Bank are not subject to fixed terms that are available to any other eligible Bank customer, you could realize a direct benefit, and, accordingly, have an interest in the contracts of the Bank. As discussed above, your relationships with the Bank are common relationships, including checking, savings, and investment accounts. In order to determine whether the relationships are "ordinary customer" relationships, which would indicate that you do not have an interest in the Bank's depository contracts, the factors set forth above in the discussion of R.C. 102.03(D) and (E) must be applied.



When a public official's family member is also an employee of a bank, even though he has no ownership or fiduciary connection with the bank, the employee may have a connection with the bank such that he or she will benefit from the placement of depository contracts with the bank. (See Adv. Op. No. 80-001 for the definition of family.) Not all employees, however, are considered to have an interest in the contracts of their employers. Some of the factors the official should consider to determine whether her family member, who is an employee of the bank and has no fiduciary or ownership interest in the bank, would benefit from depository contracts placed with the bank include: (1) does the continuation of her family member's employment depend upon the placement of investments; (2) will her family member have a role, as a bank employee, in the administration or decision making with respect to the investments; and (3) will her family member otherwise profit from the placement of investments. See generally Adv. Ops. No. 89-008 and 88-005 (discussing the Ethics Law restrictions on public officials whose family members are employees of parties that will be affected by decisions pending before the public agency the official serves). When a public official's family members have an ownership interest in the bank, or hold board member or other fiduciary positions with the bank, the official's family members may receive a definite and direct benefit from decisions that benefit the bank. In that case, the public official may be inclined to consider the interests of her family members, rather than the interests of the public agency she serves, when making decisions about the bank. If any of these factors is evident, the public official would be prohibited from participating with respect to the depository contracts between the public agency and the bank with which her family member has a connection under R.C. 2921.42(A)(1).

Your question does not disclose whether these factors exist. The factors that you have disclosed indicate that you are an "ordinary customer" of the Bank. Additionally, nothing in the facts you have provided indicates that you would have any other kind of direct interest in the Bank's contracts, such as a fee or commission. Therefore, you do not have a definite and direct interest in the contracts of the Bank for purposes of R.C. 2921.42. Accordingly, you would not be prohibited, as Village clerk-treasurer, from authorizing a contract to the Bank by R.C. 2921.42(A)(1) or from authorizing the investment of Village funds with the Bank under R.C. 2921.42(A)(2). If, however, you have any relationship with the Bank that is not any ordinary customer relationship, that is dependent upon the Village's business in any way, or you have any other definite and direct interest in the Bank's contracts, the prohibitions of R.C. 2921.42 may apply.

### **The Bank as a Business Associate--R.C. 2921.42(A)(1) and (2)**

Pursuant to R.C. 2921.42(A)(1) and (2), a public official or employee is also prohibited from authorizing a public contract to, or authorizing the investment of public funds with, her business associates. In the present situation, your relationships with the Bank are limited to ordinary customer relationships. The Commission must then determine whether the Bank is a business associate of its ordinary customers, such that you, as Village clerk-treasurer, would be prohibited from authorizing the investment of public funds with the Bank.

The term "business associate" is not statutorily defined for purposes of R.C. 2921.42. The Ethics Commission has held that a business associate relationship exists whenever parties act together to pursue a common business enterprise. Adv. Ops. No. 84-013 (a firm is a business associate of an agency or representative), 85-004 (business partners are business associates), and 92-008 (a bank is a business associate of its employees and board members). The Commission

has also determined that some business connections are too limited to be considered a "business association." For example, in Advisory Opinion No. 93-001, the Commission concluded that, absent facts indicating otherwise, an owner of a small number of shares of stock in a bank is not a business associate of the bank.

While a bank may benefit from its customers' use of its services, in the form of increased deposits that it utilizes for its own business purposes, a bank and its customers are not acting in concert or pursuing a common business goal. Customers select a bank based upon their own personal objectives, such as the quantity, quality, and availability of services, and security for their investments. Banks take on customers based upon the bank's objectives, such as making profits and increasing net worth. While both parties benefit from the relationship, they each enter into the relationship for their own purposes. They are not pursuing a business goal that is common to them both. A bank and an ordinary customer of the bank, therefore, are not business associates.

The Commission has already determined that, as an ordinary customer of the Bank, you do not have an interest in the Bank's contracts. Your relationship with the Bank is limited to your checking and savings account, a CD, and an IRA. Your use of the Bank's services is for your own personal benefit. You are also not an employee or board member of the Bank, and you do not work with the Bank to pursue a common business objective. The Commission concludes, therefore, that the Bank is not your business associate for purposes of R.C. 2921.42(A)(1) or (2). You are not prohibited by R.C. 2921.42, as the Village clerk-treasurer, from authorizing a public contract to the Bank or authorizing the investment of public funds in a share, bond, mortgage, or other security, in which the Bank has an interest. If, however, you or your family became an employee of the bank, or you or a family member acquired an ownership interest in the Bank, the prohibitions of R.C. 2921.42 may apply.

### **Pre-existing Relationship with the Bank**

The final question presented by your request is whether the bank has had a pre-existing depository relationship with the public agency. There is the possibility that when a public official who is a customer of a bank disregards an objective analysis of the financial benefit to the Village of an investment relationship with the bank, or otherwise attempts to solicit deposits of public money for a bank, and the bank had no previous relationship with the public agency, it may be the public official's customer relationship with the bank that is motivating her investment decisions, rather than concern for the public agency. Where an investment relationship between the public agency and the bank existed prior to the public official's public service, it is less likely that the personal relationship between the public official and the bank would impair her objectivity with respect to the bank. However, where there is no pre-existing relationship between the official and the bank, and an objective analysis of the financial benefit of a relationship with the bank has been conducted, the public official can participate in decisions affecting bank deposits in a way to alleviate these kinds of concerns. For example, the public official can disclose the extent of her customer relationships to the governing board of the public agency before the governing board makes any investment decisions about the bank. The decision of the governing board to start placing deposits with the bank with knowledge of the official's

relationship helps guard against the possibility that the official would be placing deposits based on her own interests.

### **Conclusion**

This advisory opinion is based on the facts presented and is limited to questions arising under Chapter 102. and Sections 2921.42, 2921.421, 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: (1) Conflict of interest provisions contained in Ohio's Ethics Law, within Divisions (D) and (E) of Section 102.03 of the Revised Code, do not prohibit a village clerk-treasurer from authorizing or participating in matters involving the deposit of public funds with a bank with which she has an "ordinary customer" relationship; (2) For purposes of Divisions (D) and (E) of Section 102.03 of the Revised Code, a public official or employee is an "ordinary customer" of a bank if her business relationships with the bank are subject to fixed terms that are available to all other eligible bank customers, unless any one of the four factors listed below exists; (3) Four factors that indicate that a public official or employee is not an "ordinary customer" of a bank are: (a) the public official or employee is negotiating a loan with the bank, or she has existing loan agreements with the bank on terms that vary significantly from those offered to other borrowers; (b) the total amount of the official's or employee's deposits or investments (such as certificates of deposit or individual retirement accounts) exceed the maximum amount eligible for coverage by federal deposit insurance; (c) the official or employee is employed by the bank or has any ownership interests in, or fiduciary relationships with, the bank; or (d) there is any extraordinary circumstance involved in the business relationship between the public official or employee, the public agency she serves, and/or the bank, as is further discussed herein; (4) Neither Division (A)(1) nor (A)(2) of Revised Code Section 2921.42 prohibit a village clerk-treasurer from authorizing a public contract to, or authorizing the investment of public funds with, a bank with which she has a business relationship that is limited to that of an "ordinary customer" relationship, as defined above. Revised Code Section 2921.42 may prohibit a village clerk-treasurer from taking such actions, if the clerk-treasurer or her family has additional ownership or fiduciary relationships with the bank; and (5) An "ordinary customer" of a bank, as defined above, is not a "business associate" of the bank for purposes of the prohibitions contained in Division (A)(1) and (A)(2) of Revised Code Section 2921.42.

  
Sister Mary Andrew Matesich, Chair  
Ohio Ethics Commission