



OHIO ETHICS COMMISSION

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

Advisory Opinion Number 88-004
April 7, 1988

Syllabus by the Commission:

- (1) The Ohio Ethics Law and related statutes do not prohibit a city council member from participating in matters that would provide a general, uniform benefit to citizens within the city;
- (2) Division (D) of Section 102.03 of the Revised Code prohibits a city council member from voting, deliberating, participating in discussions, or otherwise using his official authority or influence with regard to any matter that would provide such a definite and particular pecuniary benefit or detriment to property in which he has an interest that his private interests could impair his independence of judgment in making his official decisions;
- (3) Division (D) of Section 102.03 of the Revised Code prohibits a city council member from voting, deliberating, participating in discussions, or otherwise using his official authority or influence with regard to any matter that would provide a definite and particular pecuniary benefit or detriment to property in which a business associate has an interest, unless the council member can demonstrate that, under the circumstances, his independence of judgment in making official decisions could not be impaired by his business associate's interests.

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You asked whether the Ohio Ethics Law and related statutes prohibit a member of city council from discussing or voting on issues such as widening roads and installing water and sewer lines where the improvements would benefit or service property which is owned by a corporation in which he is a shareholder, as well as benefit or service other property in the same area. You also wish to know whether a member of city council is prohibited from discussing or voting on other improvements or developments in which he has no interest, but which would affect the property of individuals who have a financial interest in the council member's corporation. Your final question is whether a member of city council may discuss or vote on matters which would generally benefit the member in the same manner that all other residents of the city would be benefited.

By way of history, you state that a city council member is a shareholder in a corporation which is a limited partner in a local business. The council member wishes to know whether he may discuss or vote on improvements which would benefit the area which includes this business, or on matters which would not benefit him, but would benefit individuals who are shareholders

in his corporation or who are partners in the partnership. The city council member also owns a restaurant and residence within the city, and wishes to know if he may participate in discussions or vote on matters that would benefit his property, where it would also benefit the entire city, or a large portion thereof.

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

(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.

A "public official or employee" is defined for purposes of R.C. 102.03 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. 79-008, 80-007, and 86-002.

The term "anything of value" is defined for purposes of R.C. 102.03 in R.C. 1.03 to include money, any interest in realty, and every other thing of value. See R.C. 102.01(G). A definite, pecuniary benefit to a person or his private business is considered to be a thing of value under R.C. 102.03(D). See Advisory Opinions 79-008, 85-006, 85-011, and 86-007. More specifically, the Commission has held that an increase or enhancement in the value of property, an opportunity or ability to sell property at a profit or for a commission, or other benefit to property is a thing of value. See Advisory Opinions No. 79-003, 79-008, and 80-007. See also Advisory Opinion No. 85-006. The issue thus becomes whether these benefits are of such a character as to manifest a substantial and improper influence upon a city council member with respect to his duties. In order to resolve this issue under the facts you have presented, two areas must be addressed: (1) how directly a particular matter will benefit the property; and (2) the relationship of the party interested in the property to the council member.

In Advisory Opinion No. 85-006, the Commission addressed the issue of when a member of a city planning commission, who was employed as a realtor, could participate in decisions benefiting his real estate interests, stating:

Division (D) of Section 102.03 of the Revised Code would condition the realtor's conduct while serving. A city planning commission would consider many issues that may have a particular financial or economic impact on certain real estate interests. Thus, a realtor serving on a city planning commission, as well as every other member of the commission, should review each issue to determine whether he, his firm, or his immediate family has a private, pecuniary interest that may conflict with his public duty. If a certain decision would result in the realtor securing a definite, pecuniary benefit that would not ordinarily accrue to him in the performance of his official duties, and that would be of such character as to manifest a substantial and improper influence on him with respect to those duties, he must refrain from participating in discussions or voting on the issue.

Of course, the application of the prohibition is dependent upon the facts and circumstances of the particular case. Not all "conflicts of interest" are prohibited by Division (D) of Section 102.03 of the Revised Code, but only those in which a public official has a dual interest that would impair his independence of judgment in making decisions. For example, many general issues before local governmental bodies would provide a uniform benefit to all citizens in a jurisdiction, including the public officials making the decision. This would include general legislation on such matters as taxes, police and fire protection, schools, zoning, sewer and water services, and parks. In most cases, the benefits derived by the public officials in common with their constituents would ordinarily accrue to them in the performance of their official duties, and - would not be of such character as to manifest a substantial and improper influence on them. Furthermore, it is not sufficient merely to identify some indirect or indefinite benefit that a public official may accrue from the performance of an official act. A public official should not be precluded from participating in such decisions that he was duly elected or appointed to make, unless he would secure a particular benefit for himself that creates a conflict of interest. (Emphasis added.)

When Advisory Opinion No. 85-006 was rendered, R.C. 102.03(D) prohibited a public official or employee from using 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." Am. Sub. H.B. 300, 116th Gen.A. (1986) (eff. September 17, 1986) deleted the requirement that the thing of value not ordinarily accrue to the public official or employee in the performance of his official duties, thereby broadening the scope of the prohibition. This deletion does not, however, affect the analysis or conclusions of Advisory Opinion No. 85-006. Applying the reasoning of this opinion, therefore, a city council member may participate or vote on general legislation which provides a uniform benefit to all citizens within the city, or a large portion thereof, but may not participate in matters which provide a particular and definite pecuniary benefit to property in which he, or, as discussed below, certain other parties, have an interest. For example, a council member may participate in enacting a general zoning code for the city, but may not discuss or vote to approve a zoning change or variance affecting property in which he has an interest. See Advisory Opinions No. 79-003, 79-008, and 85-006. The Commission has also held that council members may not participate in discussions or vote on matters regarding a downtown revitalization project which would benefit their property. See Advisory Opinion No. 80-007. The revitalization project consisted of street paving, sidewalks, tree planting, and lighting, although one official was held to be precluded from participating even though the building in which he had an interest was to receive only improved lighting. Id.

The application of R.C. 102.03(D) is a factual determination, which is dependent upon the circumstances of a particular case. See Advisory Opinions 77-003, 85-006, and 86-007. Although an official may not be prohibited from participating in matters which provide a general uniform benefit to citizens of the city, the mere fact that the property of persons other than the council member will benefit from council action does not necessarily mean that, under specific circumstances, he would not receive a definite and particular benefit from the action so as to be prohibited from participating. See, e.g., Advisory Opinion No. 80-007. The standard in judging such conduct is whether the matter before council would provide such a definite and particular benefit for the council member that his private interest could impair his independence of

judgment or unbiased discretion in making his official decisions. See Advisory Opinion No. 85-006. See also Advisory Opinions No. 76-005, 77-003, and 87-006. Cf. Advisory Opinion No. 86-007 ("a member of a county board of health is prohibited from participating in discussions or voting on any license, regulation, or other matter concerning a private business owned by him"); Advisory Opinion No. 87-006 (if "a public officials or employee's private position could impair his independence of judgment with regard to his official decisions and responsibilities . . . the public official or employee is prohibited from holding such private position"). A council member should refrain from participating in any matter where an affirmative decision would decrease the value of his property, or have some other direct, detrimental effect on his private interests, as well as where an affirmative vote would benefit his property, since his independence of judgment could be impaired in either situation.

You have specifically asked about council action to widen a road which passes in front of property in which a council member has an interest, and the installation of new water and sewer lines which would service his property. You have stated that the road widening, and water and sewer lines, would service all other property owners in the same area. As discussed above, the Commission held in Advisory Opinion No. 80-007 that street paving, sidewalk construction, tree planting, and the improvement of lighting, to be undertaken by a city in an area containing the property of a council member would enhance the value of a council member's property such that "his personal interest could affect his vote, thus impairing his independence of judgment as a member of city council" Similarly, the widening of a road in front of a council member's property or the installation of water or sewer lines which would service a member's property are matters which directly affect the value of the property or provide a definite and particular pecuniary benefit to the property, such that the council member's independence of judgment could be impaired by his personal interests. Therefore, a member of city council may not vote, deliberate, or participate in discussions to widen a road or install water and sewer lines which would serve or benefit property in which he has an interest. This direct and definite benefit to property resulting from the installation of water or sewer lines should be contrasted to the construction of a new water or sewer plant, which would provide a uniform benefit to all citizens within the city, and would benefit a particular piece of property only in a general or indefinite manner. A member of city council would not be prohibited from voting, deliberating, or discussing the construction of a new water or sewer plant.

You have also asked whether a council member may participate in matters benefiting property which is owned by various parties. In the first situation you present, the council member is a shareholder in a corporation which is a limited partner in a local business which would be affected by the road widening or installation of water and sewer lines. You have further inquired whether he may participate in matters that would not benefit his personal interests, but would benefit the property of persons who are either shareholders in the same corporation, or who are the corporation's partners in the local business. The proposed improvements would affect the property of these persons held separate and apart from any transactions or relationships in which they are involved with the council member.

R.C. 102.03(D) clearly prohibits a city council member from participating in matters that would affect his personal pecuniary interest. See Advisory Opinions No. 76-005, 79-003, 80-007, 85-006, and 86-007. Therefore, a council member may not participate in matters that would

affect his residence, his business, or a business owned in part by a corporation in which he is a stockholder, since he would, under those circumstances, derive a personal, pecuniary benefit from such improvements. See Advisory Opinion No. 80-007.

Prior to the enactment of Am. Sub. H.B. 300, R.C. 102.03(D) prohibited a public official or employee from using his authority or influence to secure anything of value for himself if the thing of value were of such character as to manifest a substantial and improper influence upon him with respect to his duties. The Commission interpreted this language as prohibiting a public official from participating in his official capacity in matters that would benefit the property, business, or other interests of his spouse or his employer, since he would derive some benefit as a result of his actions. See Advisory Opinions No. 79-008, 80-003, 84-0 10, and 85-011. Cf. Advisory Opinion No. 86-007 (R.C. 102.03(D) "does not apply to things of value accruing to a family member or business associate, provided the public official does not benefit personally;" however, it would create the appearance of impropriety for a public official to participate in discussions or vote on matters concerning a business owned by a family member or business associate, even though he has no personal financial interest).

However, Am. Sub. H.B. 300 amended R.C. 102.03(D) to delete the requirement that the thing of value be for the public official or employee himself, thus broadening the scope of the prohibition of R.C. 102.03(D). See Advisory Opinion No. 87-004 (where a public official or employee has secured outside employment, anything of value or benefit to his future employer is of such character as to manifest a substantial and improper influence upon him with respect to his duties). Therefore, it is no longer necessary to demonstrate that a public official or employee would himself derive a personal, pecuniary benefit from his participation in an official matter in order to show a violation of R.C. 102.03(D). However, R.C. 102.03(D) still requires that the thing of value, whether it is secured for the official or for someone else, be of such a character as to manifest a substantial and improper influence upon him with respect to his duties.

As discussed above, the application of R.C. 102.03(D) is a factual determination which is dependent upon the circumstances of a particular case. There may be instances in which a benefit to one business associate of a council member is of such a character as to manifest a substantial and improper influence upon the council member, while a benefit to another business associate may not be of such character. For example, if the council member is a shareholder in a large corporation which has hundreds of shareholders, then the mere fact that the council member and another individual are both shareholders in the same corporation would be insufficient to indicate that the council member could not impartially fulfill his official duties with regard to a matter that would benefit that individual. However, if both the council member and individual were shareholders in the same closely held corporation, then the relationship between the two may be such that the council member could not objectively decide a matter affecting that individual. See generally Advisory Opinion No. 80-003. Again, the standard is whether the relationship between the council member and another individual is such that the council member's objectivity or independence of judgment could be impaired with regard to matters that affect the interests of that individual.

As a general matter, the relationship between a public official and his business associate is such that the public official must refrain from participating in matters that would affect his

business associate's interests. Cf. R.C. 2921.42(A)(1) (prohibiting a public official from authorizing, or using his official authority or influence to secure authorization, of a public contract in which any of his business associates has an interest). See also Advisory Opinions No. 85-004 and 86-002 (defining "business associate" for purposes of R.C. 2921.42). A council member may, however, participate in a matter affecting his business associate's interests if he can demonstrate that the facts of a particular situation indicate that his business associate's interests are such that they could not impair his independence of judgment in making official decisions.

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: (1) the Ohio Ethics Law and related statutes do not prohibit a city council member from participating in matters that would provide a general, uniform benefit to citizens within the city; (2) Division (D) of Section 102.03 of the Revised Code prohibits a city council member from voting, deliberating, participating in discussions, or otherwise using his official authority or influence with regard to any matter that would provide such a definite and particular pecuniary benefit or detriment to property in which he has an interest that his private interests could impair his independence of judgment in making his official decisions; and (3) Division (D) of Section 102.03 of the Revised Code prohibits a city council member from voting, deliberating, participating in discussions, or otherwise using his official authority or influence with regard to any matter that would provide a definite and particular pecuniary benefit or detriment to property in which a business associate has an interest, unless the council member can demonstrate that, under the circumstances, his independence of judgment in making official decisions could not be impaired by his business associate's interests.


Paul F. Ward, Chairman
Ohio Ethics Commission