

Ben Rose, *Chair*
Merom Brachman
Betty Davis
Diana Swoope

David E. Freel
Executive Director



OHIO ETHICS COMMISSION
30 West Spring Street, L3
Columbus, Ohio 43215-2256
Telephone: (614) 466-7090
Fax: (614) 466-8368

www.ethics.ohio.gov

August 12, 2010

Informal Opinion 2010-INF-0812-1

Christopher S. Ronayne

Dear Mr. Ronayne:

On July 2, 2010, the Ohio Ethics Commission received your letter requesting an advisory opinion. In your letter, you explained that you are the president of University Circle Inc. (UCI), a nonprofit community service organization. You stated that you are also a candidate for Cuyahoga County (county) Council. You have explained that UCI receives some funding from the county: \$9,000 for providing police services for a county building and a \$50,000 grant from Cuyahoga County Arts and Culture (CAC). You have asked whether, given this contract and grant, the Ethics Law and related statutes prohibit you from continuing to serve as president of UCI if you are elected to the county council position.

Brief Answer

The public contract provisions in the Ethics Law prevent those individuals who are responsible for making public purchases and expending public funds from profiting or benefiting from those purchases or expenditures, and from acting to secure such profits or benefits for themselves or closely related parties.

As explained below, within the facts you have presented, you would have an interest, but not occupy a position of profit, in the police services contract between the county and UCI. Therefore, R.C. 2921.42(A)(3) will not prohibit you from holding both positions. Other restrictions contained within R.C. 2921.42, however, will apply to these contracts.

If UCI continues to provide police services under a contract with the county or receive grant funds from CAC, R.C. 2921.42(A)(4) would prohibit you from serving as a member of county council and president of UCI *unless* you can meet the exception in R.C. 2921.42(C). As discussed below, based on the service UCI provides to the county, you may be able to meet this exception. Please note that even if you meet the exception, and can serve in both positions, R.C. 2921.42(A)(1) and 102.03(D) would prohibit you from actively using your position by voting, discussing, deliberating, formally or informally lobbying, or otherwise participating, as a

member of the council, on matters that affect UCI. R.C. 102.04(C) also prohibits you, as part of your compensated employment at UCI, from representing, advocating, or performing any other services for UCI on any matter that is before any agency of the county.

Facts

You have explained that UCI is a development, service, and advocacy corporation serving University Circle, a neighborhood in Cleveland. You have explained that UCI has an annual operating budget of \$8.56 million dollars. UCI receives \$59,000, or six-tenths of one percent (.6%) of its budget, from the county. UCI provides police services from its private patrol for a building owned by the county and occupied by the county coroner. UCI receives \$9,000 a year from the county for this service; UCI's total budget for its private patrol is \$2.4 million. You have stated that UCI is not dependent on this payment to provide continued police service to the district.

UCI also received a \$38,000 grant in 2008, and \$50,000 grant in 2009, from Cuyahoga County Arts and Culture (CAC). CAC is a regional arts and cultural district established by the county commissioners pursuant to R.C. Chapter 3381. R.C. 3318.02 provides that a regional arts and cultural district is a political subdivision of the state. The grant supports the UCI summer concert series, although the grant is not the sole source of support for the concert series.

Profiting from a Public Contract—R.C. 2921.42(A)(3)

If you were to be elected to county council, you would be a “public official” subject to the public contract restrictions in R.C. 2921.42. See R.C. 2921.01(A) (any elected officer of any political subdivision, including a county, is a “public official”). R.C. 2921.42(A)(3) states that no “public official” shall knowingly:

During the public official's term of office or within one year thereafter, occupy any position of profit in the prosecution of a public contract authorized by the public official or by a legislative body, commission, or board of which the public official was a member at the time of authorization, unless the contract was let by competitive bidding to the lowest and best bidder.

A public contract includes any purchase or acquisition of goods or services by the county. R.C. 2921.42(I)(1)(a). The county's acquisition of police services from UCI is a public contract.

When a public agency sponsors grants, loans, land reutilization programs, tax abatements, and other similar programs, and acquires community improvement services in return, the grants, loans, and other programs are “public contracts” regardless of whether they are funded through state, federal, or other moneys. See, e.g., Ohio Ethics Commission Advisory Opinions No. 2009-06, 2001-02, 92-014, and 87-004; *State v. Lordi* (2000), 140 Ohio App.3d 561, 569, discretionary appeal not allowed, 91 Ohio St.3d 1523, 91 Ohio St.3d 1526, 91 Ohio St.3d 1536, motion for reconsideration denied, 92 Ohio St.3d 1422 (2001). Therefore, the grant that UCI receives from CAC is a public contract.

The restriction in R.C. 2921.42(A)(3) applies to contracts that are authorized by a public official *or* a board of which he is a member, regardless of whether the official participated in the board's authorization. A public contract is considered to be authorized by an official or legislative body if the contract could not have been awarded without the approval of the official, the public position in which he serves, or the legislative board of which he is a member. Adv. Op. No. 87-004 and 87-008. Therefore, if you were to serve on county council, this restriction will apply to any contract authorized by the council while you are a member, regardless of whether you abstain from the council's consideration of the contract. Adv. Op. No. 87-008.

You have described two sources of funding from the county to UCI. The first contract, for police services, may be authorized by the county council. Therefore, if you were to serve on county council, this restriction will apply to any contract authorized by the council while you are a member, regardless of whether you abstain from the council's consideration of the contract. Adv. Op. No. 87-008. The other source of funding is the CAC grant to UCI. While a grant *is* a public contract, the CAC is a political subdivision that exists separate and apart from the county commissioners. The contracts and grants of CAC are authorized by officials or employees of CAC, rather than by the governing board of the county. Therefore, the prohibition in R.C. 2921.42(A)(3) will not apply to any grants from CAC to UCI. But see R.C. 2921.42(A)(4) (discussed below).

R.C. 2921.42(A)(3) prohibits a public official, during his term of office and for one year thereafter, from profiting from a contract that was awarded by his legislative body, while he is a member thereof, unless the contract was competitively bid and was awarded to the party that submitted the lowest and best bid. In the absence of competitive bidding, there is no exception to R.C. 2921.42(A)(3). Adv. Op. No. 92-014.

The prohibition of R.C. 2921.42(A)(3) will apply whenever a public official realizes a financial advantage, gain, or benefit that is a definite and direct result of a public contract authorized by him *or* by a legislative body of which he is a member, if the contract was not competitively bid and awarded to the lowest and best bidder. Adv. Op. No. 89-006. A public official will be deemed to profit from a contract awarded to his employer where: (1) the establishment or operations of his employer are dependent upon receipt of the contract; (2) the creation or continuation of the official's position with his employer is dependent upon the award of the contract; (3) monies received from the contract would be used by his employer to compensate the employee or as a basis for the official's compensation; or (4) the employee would otherwise profit from the award of the contract. Adv. Ops. No. 87-004 and 88-008.

One test of the first of these parameters, whether the establishment or operations of a company or organization are "dependent" on a particular contract or funding source, is the amount of funding the company or organization receives from the source. If any one source provides twenty-five or more percent of a company's or organization's funding, the Commission concludes, absent a showing to the contrary, that the establishment or operation of the company or organization is dependent on that source of funding. If this source of funding is a public agency, and an official of the agency is also an executive employee of the company or organization, the public official occupies a "position of profit" in the prosecution of the contracts

between the agency and the company or organization. This is true even if the company or organization uses funds other than those provided by the agency to compensate the employee.

Other factors may suggest that an organization is “dependent” on a source of funding even if the source provides less than twenty-five percent of the agency’s funding. A public official employed by an organization that receives funding from the public agency he serves should consult with the Ethics Commission to determine whether the organization is dependent on the agency’s funding.

Even if a company or organization is not dependent on a public agency for its funding, an official of the agency who is also employed in an executive position with the company or organization could occupy a position of profit in the prosecuting of contracts between the employer and the agency in one of the other ways described above. If the creation or continuation of the person’s position with the company or organization is dependent on the contract with the public agency he serves, the official occupies a position of profit in the contract. Also, an employee of an organization occupies a definite and direct position of profit in a contract of the organization when, for example, he receives a fee or commission from the contract, or some portion of the funds is earmarked to support his salary.

If a public official is employed with an organization that has a contract with his public agency, and organization is *not* dependent on the agency’s funding, the official will not necessarily occupy a position of profit in the contracts between the agency and the organization. This is true even if the funds are part of the organization’s general operating budget from which the salaries of all employees are drawn.

As set forth above, you are UCI’s president. UCI receives \$9,000, or less than one-tenth of one percent of its total funding, from its contract with the county. You have presented no other facts that suggest that UCI is dependent on the county contract. Applying the facts you have described to the factors above, the Commission concludes that the operations of the organization are not dependent upon the county contract and you do not otherwise profit from the contract.

Therefore, if elected to county council, you would not occupy a definite and direct position of profit in UCI’s contract with the county. However, if the amount of the county’s support of UCI increases, or the contractual arrangements between the county and UCI would change in any way, such that you would occupy a definite and direct position of profit in the county contract, R.C. 2921.42(A)(3) would prohibit you from serving in both positions at the same time.

Interest in a Public Contract—R.C. 2921.42(A)(4)

If elected to county council, you will also be subject to R.C. 2921.42(A)(4), which states that no public official shall knowingly:

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 the public official is connected.

R.C. 2921.42(A)(4) prohibits a public official from having any definite and direct, pecuniary or fiduciary, interest in the contracts of his agency. Adv. Ops. No. 78-005 and 81-003. An officer, chief administrative official, or member of the board of an organization has a fiduciary interest in the contracts of the organization. Adv. Ops. No. 92-004 and 96-005. A person who serves as a chief administrative official of an organization, and is compensated for his service, also has a financial interest in the contracts of the organization.

R.C. 2921.42(A)(4) prohibits you from having an interest in the contracts entered into by or for the use of any of the governmental agencies with which you are "connected." As a county council member, you will be connected with the county, and any of its divisions, departments, or offices. The contract between UCI and the county, under which the coroner's building acquires police services from UCI, is a contract entered into by and for the county.

With respect to the CAC grant, it must be determined whether a county council member would be "connected" with CAC. As noted above, CAC is not a county agency. However, CAC was created by the county, the board of commissioners (and presumably the county council) appoints the members of the CAC board, and CAC is funded through a county tax levy. Based on these facts, even though CAC is a separate political subdivision, the members of the county council will be considered "connected" with the CAC. Adv. Op. No. 89-004. R.C. 2921.42(A)(4) will prohibit you, if you are elected to county council, from having an interest in any grant awarded by CAC to UCI.

Therefore, if you were to simultaneously serve on the county council and as the president of UCI, you would have a **prohibited interest** in the contract between the county and UCI and the grant from CAC to UCI. R.C. 2921.42(A)(4) would prohibit you from serving in both positions at the same time **unless you can objectively demonstrate that you meet an exception to the law contained in R.C. 2921.42(C).**

Exception—R.C. 2921.42(C)

R.C. 2921.42(C) provides that R.C. 2921.42(A)(4) does not apply to a public contract in which a public official has an interest when all four requirements in the exception can be met. The criteria are strictly construed against the public official who must show compliance with them. Adv. Ops. No. 83-004 and 84-011. The Ethics Commission has explained that the application of the (C) exception must be consistent with the underlying principle in R.C. 2921.42: "[A] public official should not have an interest in a public contract with the governmental entity with which he serves unless the contract is the best or only alternative available to the governmental entity." (Emphasis added). Id. All four requirements in R.C. 2921.42(C) must be met, and they are:

- (1) The subject of the public contract is necessary supplies or services for the political subdivision or governmental agency or instrumentality involved;
- (2) The supplies or services are unobtainable elsewhere for the same or lower cost, or are being furnished to the political subdivision or governmental agency or instrumentality as part of a continuing course of dealing established prior to the public official's becoming associated with the political subdivision or governmental agency or instrumentality involved;
- (3) The treatment accorded the political subdivision or governmental agency or instrumentality is either preferential to or the same as that accorded other customers or clients in similar transactions;
- (4) The entire transaction is conducted at arm's length, with full knowledge by the political subdivision or governmental agency or instrumentality involved, of the interest of the public official, member of the public official's family, or business associate, and the public official takes no part in the deliberations or decision of the political subdivision or governmental agency or instrumentality with respect to the public contract.

Necessary Services—R.C. 2921.42(C)(1)

Provided that the contracts or other funding to UCI are awarded and administered by the county or CAC to carry out its mandate and purpose, as established by statutes, charter, ordinances, or resolutions of the county, the services the county would acquire through the contracts would be considered necessary. R.C. 3379.04. Adv. Ops. No. 85-002, 88-006, and 2001-02. In that case, you would be able to meet the requirement in R.C. 2921.42(C)(1).

Continuing Course of Dealing or Unobtainable Elsewhere—R.C. 2921.42(C)(2)

R.C. 2921.42(C)(2) requires that the service provided to the county by UCI are either "unobtainable elsewhere for the same or lower cost," or are furnished as part of a "continuing course of dealing" established before you became associated with the county.

Continuing Course of Dealing

For purposes of R.C. 2921.42(C)(2), a continuing course of dealing is a contractual agreement between the parties that existed prior to the time that the official assumed public office. Adv. Ops. No. 82-007, 84-006, and 88-008. You are not yet a county official and the county and CAC already have contract/grant relationships with UCI. Therefore, if you were to be elected to county council, you will meet the "continuing course of dealing" requirement in Division (C)(2) regarding any contracts or grants that are in place at the time you are sworn in to office.

If the original contract or grant terms between the county or CAC and UCI provide for automatic renewal, without any action by the county or CAC or any changes to the terms or conditions of the contract or grant after the current terms expire, the automatic renewal would be considered part of a continuing course of dealing. Adv. Op. No. 88-008. If, however, a renewal requires the county or CAC to act, or there is any revision or change in the contract or grant terms, the resulting agreements are considered new contracts, and accordingly they are not considered part of a "continuing course of dealing" for purposes of R.C. 2921.42(C)(2). Id.

If a renewal of the contracts cannot be deemed part of a "continuing course of dealing," then you would be required to demonstrate that the county and CAC cannot acquire the services provided by UCI, under its contract with the county and in return for the grant, from other sources for the same or lower cost.

Unobtainable Elsewhere for the Same or Lower Cost

The requirement that the goods or services be "unobtainable elsewhere for the same or lower cost" must be demonstrated by an objective standard. As stated in Advisory Opinion No. 84-011:

The criterion that the goods or services be "unobtainable for the same or lower cost" requires that a public official or employee be at a disadvantage when attempting to do business with his governmental entity, and that an equally qualified applicant who is not a [public official] must receive preference.

In order to meet the requirement in R.C. 2921.42(C)(2), you would have to demonstrate, objectively, that the services provided by UCI are unique, and that no other source could perform the same services for the same or lower cost. The Ethics Commission has held that, in some rare instances, an organization in which a public official has an interest may be uniquely qualified to provide services to the official's own public agency. Adv. Op. No. 88-001.

With respect to the police services contract, if UCI is the only or lowest cost provider available to assist the county by providing police services for the building where the coroner's office is located, then you can meet this part of the requirement in R.C. 2921.42(A)(4).

One way to demonstrate that UCI is the lowest cost provider for the services would be for the county to issue a request for proposals (RFP) for the services. An RFP process is not a competitive bidding process, and cannot absolutely establish whether a particular provider is the lowest cost provider. See *Danis Clarkco Landfill Co. v. Clark Cty. Solid Waste Management District* (1994), 73 Ohio St. 3d 590, 600 ("The RFP method of procurement is not competitive bidding.") See also Adv. Op. No. 88-006. Rather, an RFP process is a negotiated procurement method, where both parties have greater flexibility. Each party has the freedom to propose or chose alternatives in service delivery, price, and payment methods. The purchasing party can use subjective scoring criteria to assess responding proposals, with greater weight given to consideration such as past experience with the vendor or quality, rather than cost.

Even though an RFP is not a strict competitive bid, it can still help to establish whether there are multiple parties that would be interested in providing a particular service to the agency and determine whether a particular provider is the lowest cost provider. In order for an RFP to be truly assistive, it must be open and fair, with all potentially interested providers given the opportunity to respond to it. Further, the interested public official (in this case, you) would be prohibited from participating, in any way, in the county's decision to issue an RFP, or establishment of the terms and conditions of the contract. See also R.C. 2921.42(A)(1) and 102.03(D), discussed below.) If the RFP is openly and fairly created and advertised, you do not participate in any way to in agency's activities related to the RFP, and UCI's response to the RFP is the only or lowest cost for the necessary services, the RFP process will help you meet the requirement in R.C. 2921.42(C)(2).

With respect to the CAC grant, you will be required to demonstrate that CAC could not acquire the services provided by UCI from any other provider for the same or lower cost. The Ethics Commission has held that, in some rare instances, an organization to which a public official has an employment or fiduciary relationship may be uniquely qualified to provide services to agencies with which the official is connected. Adv. Op. No. 88-001. You can meet these requirements where either: (1) all qualified and interested applicants for CAC grants have received grants and funds remain to provide grants to UCI; or (2) CAC accepts applications for grants on an ongoing first-come, first-served basis, in a fair and open application process in which all interested and qualified applicants receive funding, and where there has historically been enough money to fund all qualified grant applications. See Adv. Op. No. 93-008 and 2001-02. The purpose of this requirement is to require a demonstration that grant funds are distributed fairly, without the official's public position influencing decision makers.

Same or Better Treatment—R.C. 2921.42(C)(3)

The third requirement, R.C. 2921.42(C)(3), is that UCI treats the county either better than or the same as it would treat other customers or clients in similar transaction. In situations where the contract involves grant programs, the Commission has explained that grant recipients have no customers or clients in similar transactions. Adv. Ops. No. 84-011 and 2001-02. Therefore, you can meet this part of the exception for the CAC grant. For the police service contract, you would have to show that the services you provide to the county are the same as or better than the services UCI provides to any other person for which it provides police services.

Arm's Length Transaction—R.C. 2921.42(C)(4)

Finally, R.C. 2921.42(C)(4) requires that the entire transaction is conducted at arm's length, that the county and CAC have full knowledge that you have an interest in any contracts or grants awarded to UCI, and that you take no part in the county's or CAC's decisions regarding the contract or grant. For example, R.C. 2921.42(C)(4) would prohibit you from discussing any UCI contracts with the County Executive.

In an arm's length transaction: (1) both UCI and the public agency act voluntarily, without compulsion or duress; (2) the transaction occurs in an open market; and (3) both UCI

and the public agency act in their own self-interest. *Walters v. Knox Cty. Bd. of Rev.* (1989), 47 Ohio St.3d 23, 25. With respect to the criteria set forth in Division (C)(4), the Commission has concluded that, if the public agency's procedure for determining whether to provide financing for a particular project, notice to prospective funding recipients, and selection of qualified projects are fair and objective with no preference given to organizations connected with public officials or employees, it will significantly help a public official to demonstrate compliance. Adv. Op. No. 84-011.

Summary of R.C. 2921.42(C) Exception

If you are unable to meet any of the four requirements in R.C. 2921.42(C), you would be prohibited from simultaneously serving as a member of the council and as the President of UCI. Based on the facts you have presented, you may be able to meet all four parts of this exception. If you are able to meet the exception in R.C. 2921.42(C), you would not have an unlawful interest in the county contract and CAC grant you have described. However, you must comply with other provisions of the Ethics Law that will limit your conduct.

Other Requirements

R.C. 2921.42(A)(1), a felony provision, states that a public official shall not knowingly authorize or employ the authority or influence of his office to secure authorization of any public contract in which he has an interest. This provision would prohibit you, as a county council member, from voting upon, discussing, or otherwise using your authority or influence to secure, any allocation of county funds to UCI. You would be prohibited, for example, from recommending UCI to any county agency or any other public agency with which you are connected (such as CAC), or from using your position to set forth competitive bidding or RFP requirements if UCI is likely to respond to the invitation or RFP. You would be prohibited from discussing contract matters related to UCI with any county officials or employees, including the County Executive.

R.C. 102.03(D) would prohibit you from using or authorizing the use of the authority or influence of your office to secure anything of value if the thing of value is of such a character as to manifest a substantial and improper influence upon you with respect to your duties. R.C. 102.03(E) would prohibit you from soliciting anything of value if the thing of value is of such a character as to manifest a substantial and improper influence upon you with respect to your duties. The Ethics Commission has determined that R.C. 102.03(D) and (E) prohibit a public official from participating in any matter that would provide a benefit to an organization that he serves in a fiduciary capacity and from soliciting any benefit to an organization he serves in a fiduciary capacity. See Adv. Ops. No. 89-005, 90-012, and 92-004.

In the situation you have described, the funding that UCI receives from the county and CAC is a thing of value. Because you serve as the President of UCI, the funding that UCI receives from the county could manifest a substantial and improper influence upon you in matters before the county council involving UCI. Adv. Op. No. 87-006.

Therefore, R.C. 102.03(D) and (E) would prohibit you from participating in matters before county council that affect the interests of UCI. You would be prohibited from participating in council votes or discussion, and any other formal action by council, involving these matters. In addition, you are prohibited from participating in such matters informally by discussing them with other council members and engaging in formal or informal lobbying on behalf of UCI. For example, you would be prohibited from participating if the county council were to be discussing terms or requirements for an RFP or competitive bid for police services. You would be prohibited from discussing matters related to UCI with any county officials or employees, including the County Executive.

If UCI has affiliated organizations, or sub-units, the restrictions in R.C. 102.03(D) and (E) apply to matters affecting those organizations as well. You would be prohibited from participating in any of the ways described above in matters before county council affecting the affiliates of UCI. Adv. Op. No. 2008-02.

You have described UCI as an advocacy organization serving University Circle. R.C. 102.03(D) will prohibit you, as a county council member, from participating in matters before council that affect members of the organization, if UCI has an interest in the matter or is representing the member on the matter. For example, if an organization that is a member of UCI is working on a development project and UCI is a project partner, helped secure funding for, or advocated for the member before other public agencies on, the project, R.C. 102.03(D) will prohibit you from participating in the council's consideration of any matters involving the project that come before it. If UCI has no role or interest in matters before county council that affect its members, R.C. 102.03(D) will not prohibit you from participating in those matters.

Further, the Commission delineated the specific application of R.C. 102.03(D) to outside employment issues. Some of the restrictions will apply to you if you are elected to county council and continue to serve as the president of UCI. Specifically, you will be prohibited from lending the stature inherent in your position to the promotion or advocacy of a matter for UCI or its members. Adv. Op. No. 2008-02. If UCI has expressed a position on a matter that is before council, even if UCI is not a party to the matter, you will be prohibited from participating in council's discussion, consideration, or actions on the matter. Id. You would also be prohibited from discussing matters on which UCI has expressed a position with any county officials or employees, including the County Executive. UCI has expressed a position on a matter where its board votes or makes a determination on a matter, directs staff to lobby or speak on its behalf on the matter, or otherwise makes its position on the matter known through communications by the board or the staff of the organization.

Other specific restrictions are enumerated in Advisory Opinion No. 96-004 and 2008-02. For example, you are prohibited from using public time, facilities, personnel, or other resources in conducting UCI's business. See also R.C. 2921.41 (theft in office). Copies of these opinions are enclosed for your use.

You should also be aware that R.C. 102.04(C) prohibits you, as a member of county Council, from receiving compensation from UCI for performing services on matters

pending before any instrumentality of the county.¹ You are compensated for your service as the President of UCI. Therefore, in the course of your job duties with UCI, you would be prohibited from discussing UCI's contracts with any county official or employee, and from interacting with county offices regarding any of the services that UCI provides to the county. R.C. 102.04(C) also prohibits you from performing services, on behalf of UCI's members, on matters that are before any agency of the county.

For example, if the county and UCI are working together on a joint project that affects University Circle or its members, you would be prohibited from acting as UCI's representative on the project in any meetings with the county. Adv. Op. No. 89-008. You would be prohibited from making telephone calls, sending e-mails or letters, or performing any other services before the county on the joint project as an employee of UCI. Adv. Op. No. 91-006.

If it is necessary for an employee of UCI to perform services for UCI or its members on any matters that will be before a county agency, it must be someone other than you. If your job duties as UCI President require that you work on matters affecting UCI or its members that will be before any county agencies, it would be impossible for you to engage in those job duties and comply with R.C. 102.04(C) while you serve on county council.

Additionally, R.C. 102.03(A)(1) prohibits you from representing UCI, before any public agency including but not limited to the county, on any matter in which you personally participated as a public official. Unlike R.C. 102.04(C), which prohibits you from receiving compensation to perform services, R.C. 102.03(A)(1) prohibits you from representing any person on certain matters regardless of whether you receive compensation for your services. This prohibition applies to you during your public service and for one year after your public service.

Therefore, if you participated in a matter as a member of county council, and were later asked to represent UCI or any other person except the county on the matter before any public agency, such as a state department, municipality, or regional authority, R.C. 102.03(A)(1) would prohibit you from engaging in those activities.

Finally, if you were to be elected to county council, R.C. 102.03(B) will prohibit you from disclosing or using, without appropriate authorization, any confidential information you acquired during that service. You will be prohibited from disclosing or using the information even if you do not personally benefit from the disclosure or use. There is no time limit for this prohibition, and it will apply to you during and after your service, as long as the information is confidential.

Conclusion

The Commission advises that, if you continue to serve as the President of UCI after being elected to county council, you should exercise extreme caution to make sure you are complying with all of the requirements in the law discussed in this opinion. Failure to comply with these

¹ There is an exception to this prohibition, but it would not apply to you as an elected official.

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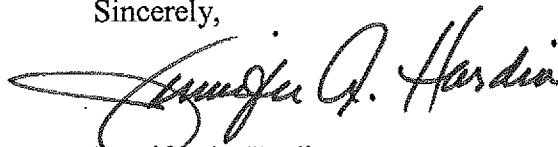
restrictions can result in consequences for the county as well as criminal penalty for you. For example, if you were unable to show that you meet the exception in R.C. 2921.42(C) regarding a contract between the county and UCI, the contract would be void and unenforceable. R.C. 2921.42(H). You should seek assistance from the Ethics Commission if you have any questions about your ability to comply with the law after election to county council.

As explained above, within the facts you have presented, you would have an interest, but not occupy a position of profit, in the police services contract between the county and UCI. Therefore, R.C. 2921.42(A)(3) will not prohibit you from holding both positions. Other restrictions contained within R.C. 2921.42, however, will apply to these contracts.

If UCI continues to provide police services under a contract with the county or receive grant funds from CAC, R.C. 2921.42(A)(4) would prohibit you from serving as a member of county council and president of UCI *unless* you can meet the exception in R.C. 2921.42(C). As discussed below, based on the service UCI provides to the county, you may be able to meet this exception. Please note that even if you meet the exception, and can serve in both positions, R.C. 2921.42(A)(1) and 102.03(D) would prohibit you from actively using your position by voting, discussing, deliberating, formally or informally lobbying, or otherwise participating, as a member of the council, on matters that affect UCI. R.C. 102.04(C) also prohibits you, as part of your compensated employment at UCI, from representing, advocating, or performing any other services for UCI on any matter that is before any agency of the county.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on August 10, 2010. The opinion is based on the facts presented. It 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. If you have any questions or desire additional information, please feel free to contact this Office again.

Sincerely,



Jennifer A. Hardin
Chief Advisory Attorney

Enclosures: Advisory Opinion No. 96-004 and 2008-02