



OHIO ETHICS COMMISSION

150 EAST BROAD STREET
COLUMBUS 43215
(614) 466-7090

Advisory Opinion No. 79-008

November 30, 1979

Syllabus by the Commission:

Division (D) of Section 102.03 of the Revised Code prohibits a city council member from voting on a zoning change affecting real property owned by his wife.

In your request for an Ohio Ethics Commission Advisory Opinion, you asked whether the Ohio Ethics Law and related statutes would prohibit a member of city council from voting to approve a zoning change affecting property owned by his wife.

You stated, by way history, that the city council has been asked to approve a zoning change involving property owned by a council member's wife. The property consists of two adjoining parcels, one zoned residential and one commercial. The council member's wife seeks to have the residential parcel zoned commercial. If the zoning change is approved, the council member's wife will be able to sell the two parcels at a substantial profit.

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

No public official or employee shall use or attempt to use 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.

The pertinent elements of this provision are: 1) a public official; 2) is prohibited from using or attempting to use his official position; 3) to secure anything of value for himself; 4) the thing of value would not ordinarily accrue to him in the performance of his official duties; and 5) the thing of value is of such character as to manifest a substantial and improper influence upon him with respect to his duties.

In the instant case, the member of city council is a "public official or employee" as that term is defined in Division (B) of Section 102.01 of the Revised Code. In addition, the city council member, by voting on a zoning change that would affect his wife's property, would be using or attempting to use his official position. The proceeds from the sale of real property are something of value that would not ordinarily accrue to a city council member in the performance of his duties, and are of such character as to manifest a substantial and improper influence on him by influencing his vote on the zoning change. (See: Ohio Ethics Commission Advisory Opinion No. 76-005)

Thus, the application of Division (D) of Section 102.03 of the Revised Code in the instant case turns on whether a city council member would be using or attempting to use his official

position "to secure anything of value for himself" if he voted to approve a zoning change affecting property owned by his wife. A city council member who votes to approve a zoning change which would benefit his wife would also benefit himself to the extent that the property increases in value, and the opportunity to realize the increased value through the sale of the property is clearly a benefit arising from the relationship. Thus, under the facts presented, the Commission believes that the city council member would derive a definite, pecuniary benefit as a direct result of his vote to approve a zoning change affecting his wife's property. Such conduct constitutes use or attempted use of his official position in order to secure something of value for himself, even though the benefit does not flow directly to the public official, and even though he shares that benefit with his spouse. This conclusion is supported by previous Commission opinions, which have held that if a public official uses or attempts to use his official position to benefit a business associate or a potential employer, knowing that he will definitely derive some benefit, such as the promise of future employment, as a direct result of his conduct as a public official, he would be in violation of Division (D) of Section 102.03 of the Revised Code. (See: Ohio Ethics Commission Advisory opinions Nos. 76-005, 77-003 and 77-006; and See also: Advisory Opinions Nos. 79-001, 79-002 and 79-003)

The conclusions of this advisory opinion are based on an examination of the facts presented. The Ohio Ethics Commission cautions that its advisory opinions may be relied upon only with respect to questions arising under Chapter 102. and Section 2921.42 of the Revised Code, and do not address possible violations of other laws or rules.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that: Division (D) of Section 102.03 of the Revised Code prohibits a city council member from voting on a zoning change affecting real property owned by his wife.

Mary K. Lazarus

