



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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Advisory Opinion Number 85-004
May 16, 1985

Syllabus by the Commission:

Division (A)(1) of Section 2921.42 of the Revised Code prohibits the Chairman or a member of the Ohio Building Authority, who is involved in a number of unrelated business partnerships with the principal of an architectural firm under contract to design a state office complex, from participating in deliberations, voting, or otherwise using the authority or influence of his office to secure authorization of changes in the terms or conditions of the contract, or other decisions under the contract, that materially affect the financial interests of the architectural firm.

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You asked whether the Ohio Ethics Law and related statutes prohibit the Chairman of the Ohio Building Authority, who is involved in a number of unrelated business partnerships with the principal of an architectural firm under contract to design a state office building, performing arts center, and garage, from participating in deliberations or voting on issues concerning the complex.

You stated, by way of history, that you recently were appointed as Chairman of the Ohio Building Authority (hereinafter Authority). Prior to your appointment, a contract to design a new state office building, performing arts center, and garage was awarded to a joint venture headed by an architectural firm. You indicated that this firm was recommended by an advisory committee on which you served as chairman prior to your appointment. You stated further that you and the principal in the architectural firm are involved in a number of unrelated business partnerships. Specifically, the interests are as follows:

- 1) His 5 per cent interest as a limited partner in a limited partnership in which you have a 70 per cent interest as the sole general partner;
- 2) His 1 per cent interest as a limited partner in a limited partnership in which you have a 40.5 per cent interest either as a limited partner or through the corporate general partner;
- 3) His less than 2 per cent interest as a limited partner in a limited partnership in which you have an approximately 35 per cent interest either as a limited partner or through the corporate general partner; and

4) His 1 per cent interest in a general partnership in which you or trusts for your children have a 17.25 per cent interest. (These interests in the general partnership are through separate partnerships.)

You indicated further that the architectural firm has done work on other projects and with other organizations in which you have a material interest. You stated that you would not participate in discussions or vote on any matter in which the financial interests of the architectural firm may be affected.

Division (A)(1) of Section 2921.42 of the Revised Code provides:

(A) No public official shall knowingly do 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 family member, or any of his business associates has an interest.

The Chairman or a member of the Authority is a "public official" as defined in Division (A) of Section 2921.01 of the Revised Code because he is an appointed officer of the state. The contract between the Authority and the architectural firm is a "public contract" as defined in Division (E) of Section 2921.42 of the Revised Code because it is: (1) a contract for the purchase or acquisition of architectural services by the state; and (2) a contract for the design of a public property. An officer, board member, partner, or principal shareholder in the architectural firm would have an interest in the public contract for architectural services. Thus, the initial question is whether the principal in the architectural firm is a "business associate" of the Chairman of the Authority.

The term "business associate" is not defined in the Ohio Revised Code. However, the general meaning of the term "associate" is as follows:

In ordinary nomenclature it signifies, to connect closely or join with others in a common purpose, activity, or responsibility, to partake or share in a common design. It implies participation by each of the individuals, so united, in the achievement of a common purpose. In its general and ordinary sense it is said to signify confederacy or union for a particular purpose . . . Weir v. United States, 92 F.2d 634, 638 (7th Cir. 1937).

Another definition of "associate" is "to join often, in a loose relationship as a partner, fellow worker, colleague, friend, companion or ally." Di Marco v. Greene, 385 F.2d 556, 561 (6th Cir. 1967). Thus, the definition would include the relationship of partners. As used in Division (A)(1) of Section 2921.42 of the Revised Code, this partnership relationship must be for business purposes. Division (A) of Section 1775.05 of the Revised Code defines "partnership" as follows:

A partnership is an association of two or more persons to carry on as co-owners of a business for profit.

Consequently, a partner in a business enterprise would be a "business associate" by definition, since he would be associated with another person as a co-owner of a business for profit.

The question arises whether a distinction should be made between general and limited partners, or between greater and lesser interests. Under the facts presented, only one of the partnerships is a general partnership, and the interests of the Chairman and the principal are through separate partnerships. Also, the principal in the architectural firm has a personal interest of not more than five percent in any of the partnerships. Nevertheless, a limited partnership is, by definition, a "partnership." Division (G) of Section 1782.01 of the Revised Code provides the following:

"Limited partnership" and "domestic limited partnership" means a partnership formed by two or more persons under the laws of this state, having as members one or more general partners and one or more limited partners.

Also, neither Section 2921.42 of the Revised Code nor Ohio partnership law recognizes a threshold interest below which a person ceases to be an "associate" or "partner." Even if certain lesser interests could be distinguished, the facts indicate that the principal in the architectural firm and the Chairman of the Authority are associated in four different partnerships. In addition, the architectural firm has performed services on projects or with organizations in which the Chairman has been interested. Therefore, based on all the facts and circumstances presented, we conclude that the principal in the architectural firm is a "business associate" of the Chairman of the Authority for purposes of Division (A)(1) of Section 2921.42 of the Revised Code.

The original contract for design services between the architectural firm and the Authority was authorized before the Chairman took office. Although he served as chairman of the advisory committee that recommended the architectural firm to the Authority, he did not become a "public official" for purposes of Section 2921.42 of the Revised Code until he became Chairman of the Authority itself. It is the Authority, and not the advisory committee, that has the sovereign authority of the state to approve contracts. Thus, the fundamental question is whether any future issues coming before the Authority with regard to the new state complex, including changes in the terms or conditions of the contract with the architectural firm, or decisions under the contract, that have a financial impact on the firm would be within the purview of Division (A)(1) of Section 2921.42 of the Revised Code.

In reviewing the language of the prohibition and the definition of "public contract," it is apparent that the statute seeks to prohibit a public official from authorizing or approving any purchase or acquisition of services from a business associate. This encompasses more than the original authorization or approval of a particular architectural firm to design a public property. The existing agreement contemplates a number of subsequent decisions concerning the scope of the project, the architect's compensation, and additional services. Any material revision, alteration, or change in the terms or conditions of the original contract, or any decision under the contract, that authorizes or approves compensation, the purchase or acquisition of additional architectural services, or a new design of the property would constitute the authorization of a public contract for purposes of the statute (See: Ohio Ethics Commission Advisory Opinion No.

82-007). This would include subsequent negotiations under the terms of the contract that materially affect the financial interests of the architectural firm. For example, the following issues may arise in the future:

- (1) architectural plans or documentation that materially affect the compensation to the architectural firm;
- (2) a budget for construction costs that would fix the architect's fee under the terms of the contract;
- (3) material changes in the scope of the project resulting in subsequent renegotiation of the compensation to the architectural firm;
- (4) any optional or additional architectural services under the contract resulting in additional compensation to the architectural firm;
- (5) delays in the project resulting in subsequent renegotiation of the compensation to the architectural firm;
- (6) certain specified tenant improvements and interior design services resulting in additional compensation to the architectural firm; and
- (7) disputes between the contractor and the architectural firm in which the architect has a material financial interest.

The architectural firm would have a direct and material financial interest in these issues. Thus, Division (A)(1) of Section 2921.42 of the Revised Code prohibits the Chairman of the Authority from participating in deliberations, voting, or otherwise using the authority or influence of his office to secure approval of any change in the terms or conditions of the contract, or any decision under the contract, that materially affects the financial interests of the architectural firm (See: Ohio Ethics Commission Advisory Opinions No. 78-006, 80-003, and 81-001).

With regard to issues that do not materially affect the financial interests of the architectural firm, the prohibition of Division (A)(1) of Section 2921.42 of the Revised Code would not apply. However, participation in discussions or voting in matters concerning the architectural firm may create the appearance of a conflict of interest due to the Chairman's business relationship with the principal of the architectural firm.

The conclusions of this opinion are based on the facts presented, and are limited to questions arising under Chapter 102. and Section 2921.42 of the Revised Code.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised that: Division (A)(1) of Section 2921.42 of the Revised Code prohibits the Chairman or a member of the Ohio Building Authority, who is involved in a number of unrelated business partnerships with the principal of an architectural firm under contract to design a state office complex, from

participating in deliberations, voting, or otherwise using the authority or influence of his office to secure authorization of changes in the terms or conditions of the contract, or other decisions under the contract, that materially affect the financial interests of the architectural firm.


Robert Y. Farrington, Chairman
OHIO ETHICS COMMISSION