



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

Advisory Opinion No. 91-004
August 21, 1991

Syllabus by the Commission:

(1) The Ohio Ethics Law and related statutes do not prohibit a member of city council whose spouse serves as an uncompensated member of the city planning commission from participating in council's review of, and action upon, the decisions or recommendations of the planning commission, including those matters in which her spouse participated, so long as the matter does not affect the personal pecuniary interests of the city council member or her spouse.

(2) Division (D) of Section 102.03 prohibits a city planning commission member from participating in any matter that would directly affect the interests of the bank that employs him or his own interests as an employee of the bank, or in any matter where he or the bank would have a contingent interest in the outcome of the planning commission's decision or recommendation. Division (D) of Section 102.03 would not, however, prohibit, per se, the planning commission member from participating in matters affecting the interests of a customer of the bank, unless the relationship between the commission member as a bank employee and the customer is such that the commission member's objectivity or independence of judgment could be impaired with regard to matters that affect the interests of the customer.

(3) Division (D) of Section 102.03 of the Revised Code would not, as a general matter, prohibit a city council member whose spouse is employed by a bank from participating in matters involving customers of the bank, unless her spouse would derive a definite and direct personal pecuniary benefit from council's action.

(4) Division (D) of Section 102.03 of the Revised Code prohibits a city planning commission member who owns stock in a bank from participating in any matter affecting the interests of a bank customer where the bank would also have a direct or contingent interest in the outcome of the planning commission's decision or recommendation. Division (D) of Section 102.03 would not, however, prohibit, per se, the planning commission member from participating in a matter affecting the interests of a bank customer where the bank itself would have no interest in the outcome of the matter, unless the relationship between the commission member and the customer is such that the commission member's objectivity or independence of judgment could be impaired with regard to matters that affect the interests of the customer.

(5) Division (D) of Section 102.03 of the Revised Code prohibits a city council member from participating in any matter affecting the interests of a customer of a bank in which

her spouse owns stock, where the bank would also have a direct or contingent interest in the matter. She would not otherwise be prohibited, however, from participating in a matter solely on the basis that the matter would affect the interests of a bank customer.

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You have asked several questions concerning the restrictions of the Ethics Law, as applied to the actions of a city council member and a member of the city planning commission, in light of the fact that these two officials are married to each other, and that the member of the city planning commission is employed as a commercial loan officer by a local bank.

You ask first whether the city council member, whose spouse is a member of the city planning commission, is prohibited from participating in matters which have been passed upon by the city planning commission. Your second question is whether the member of the city planning commission and the council member are prohibited from participating in matters which concern customers of the bank which employs the member of the city planning commission.

Your first question is whether the city council member, whose spouse is a member of the city planning commission, is prohibited from voting, discussing, or participating in deliberations on issues which have been passed upon by the city planning commission. You have stated that the planning commission makes many decisions which must be reviewed and acted upon by council. See, e.g., R.C. 713.09, 713.11, and 713.12. You have asked the Ethics Commission to consider instances in which the planning commission member may have abstained, and instances in which he participated.

It must first be noted that the Ethics Law and related statutes do not per se prohibit members of the same family from simultaneously serving as public officials within the same political subdivision. See Advisory Opinions No. 90-004 and 90-010. There are, however, provisions which limit or restrict the conduct of public officials with respect to members of their family. Division (D) of Section 102.03 of the Revised Code reads as follows:

(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 character as to manifest a substantial and improper influence upon him with respect to his duties.

The term "public official or employee" is defined for purposes of R.C. Chapter 102. 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 and a member of a city planning commission are "public officials or employees" as defined for purposes of R.C. 102.03, and are, therefore, subject to the prohibitions of that Section. See R.C. 731.01 and Advisory Opinions No. 76-005, 79-008, 86-002, 88-004, 89-008, and 89-016; R.C. 713.01 and Advisory Opinions No. 80-007, 85-006, and 88-005, respectively.

The term "anything of value" is defined for purposes of R.C. 102.03 in R.C. 1.03 to include money and every other thing of value. See R.C. 102.01(G). A definite, pecuniary benefit

is considered to be a thing of value under R.C. 102.03. See Advisory Opinions No. 79-008, 85-006, 88-004, and 89-002.

R.C. 102.03(D) prohibits a public official from participating in any matter where the official would have an inherent conflict of interest such that his objectivity and independence of judgment with regard to his official decisions and responsibilities could be impaired. See Advisory Opinions No. 84-009, 85-006, 88-004, and 88-005. A public official or employee is prohibited by R.C. 102.03(D) from using the authority or influence of his position to secure anything of value for himself or for another party, if the relationship between the official and the other party is such that his objectivity and independence of judgment could be impaired with respect to matters which affect the interests of that party. See Advisory Opinions No. 88-004, 88-005, 89-005, 89-008, and 90-004.

For example, the Commission has held that R.C. 102.03 (D) prohibits a city council member from participating in the city council's consideration of a matter where the council member's spouse would receive a definite and direct, private and pecuniary benefit as a result of council's action or decision. See Advisory Opinions No. 79-008, 84-010, 85-011, 89-008, and 90-004. See also Advisory Opinions No. 85-006 and 88-004. You have stated, however, that the planning commission member receives no compensation for his service on the Commission, see R.C. 713.01. The Commission has held that an uncompensated public position does not constitute a thing of value under R.C. 102.03. See Advisory Opinion No. 88-002. Therefore, your question raises no issue concerning the ability of the city council member to participate in matters concerning appropriations to the planning commission, or the compensation or tenure of the members thereof, since her husband would receive no personal, pecuniary benefit as a planning commission member, as a result of council's actions. See Advisory Opinions No. 85-003 and 90-004. See also Ohio Attorney General Opinion No. 90-040. The issue, thus, becomes whether the decisions of the city planning commission would result in such a definite and direct, personal pecuniary benefit to the member of the planning commission who is the council member's spouse, that the council member would be prohibited from participating in the review of, and action upon, the decisions of the planning commission.

As set forth above, R.C. 102.03(D) prohibits both the city council member and planning commission member from participating in any matter in which they or their spouse would have a definite and direct, personal and pecuniary interest. See Advisory Opinion No. 89-008. Therefore, they would be prohibited from voting, deliberating, participating in discussions, or otherwise using their official authority or influence with regard to any matter that would provide a definite and particular pecuniary benefit or detriment to property or other matter in which they or their spouse has a financial interest. See Advisory Opinion No. 88-004. It is presumed, however, that the majority of matters which are before the planning commission and city council would not directly affect the private, financial interests of the officials involved, and it is these matters to which your question is directed.

Your question may be addressed by examining two lines of advisory opinions previously issued by the Ethics Commission which have applied the prohibition of R.C. 102.03(D). First, the Ethics Commission has held that a public official is prohibited by R.C. 102.03 (D) from reviewing, in his official capacity, work that he has prepared in his private capacity, or work

prepared by other employees or members of his private employer or firm, since the fees or compensation earned by the official in his private capacity or by his business associates could impair the official's objectivity and independence of judgment. See Advisory Opinions No. 82-001, 83-001, 84-004, 88-009, 89-016, 90-008, and 90-011. The Commission has held, for example, that R.C. 102.03 (D) "would prohibit a council member from participating in a matter in which a member of his law firm has prepared documents, provided legal consultation or advice, or provided other legal service which he would be required to review and act upon in his official capacity." Advisory Opinion No. 90-011. See also Advisory Opinions No. 89-016 and 90-008.

In this instance, the city council member would be reviewing the decisions of a commission of which her spouse is a member. Furthermore, if her spouse participated as a commission member in a particular matter, she would be reviewing the decisions or actions of her spouse. However, you have indicated that members of the planning commission serve without compensation. The Commission has held that a position which does not provide any compensation or other thing of value does not constitute "anything of value" for purposes of R.C. 102.03. See Advisory Opinions No. 88-002 and 90-012. The mere fact that the council member's spouse serves on the planning commission is insufficient to find that she would be prohibited by R.C. 102.03(D) from participating in the review of the commission's decisions, even in situations where her spouse has participated in the commission's decision. The possibility that the objectivity and impartiality of the council member could be impaired by the fact that her spouse serves, without compensation, on the planning commission, is sufficiently remote that his service on the commission would not be of such a character as to manifest a substantial and improper influence upon the council member, even in those instances where her spouse may have participated in the commission's decision-making. See generally Advisory Opinions No. 88-005, 90-008, and 90-011. See also Ohio Attorney General Opinion No. 90-040 (which notes, in addressing issue of three family members serving as township trustee, member of township's zoning commission and member of township's board of zoning appeals, that "all three positions are concerned with the adoption, implementation, and enforcement of the township zoning plan," and that "there exists the possibility for abuse" in the situation, but that it must be assumed, "in the absence of evidence to the contrary that all the individuals in question are acting in good faith, and in accordance with the law").

This conclusion is also supported by Advisory Opinion No. 90-004, in which the Ethics Commission addressed the issue whether a member of city council was prohibited from participating in council's decision to provide accommodations, books, employees, supplies, and services for the municipal court and its officers, where his spouse was a judge of the municipal court. The Commission noted that the issue was "whether the municipal court judge would receive a definite and direct, private pecuniary benefit as a result of the city council's provision of or payment for, accommodations, law books, employees, supplies, and services for the court." The Commission went on to state in Advisory Opinion No. 90-004:

In Advisory Opinion No. 89-002, the Ethics Commission held that the receipt of a thing of value by and for the use of a public agency is not of such character as to manifest an improper influence on the officials and employees of that agency so long as no official or employee of the agency benefits personally. By extension, the receipt of accommodations, personnel, and

supplies by the public agency with which the spouse of a city council member serves is not of such character as to manifest an improper influence upon the city council member.

It apparent from the statutory language in R.C. 1901.36 that the accommodations, law books, employees, supplies, and services are provided to the municipal court by the legislative authority for the use of the judge and court personnel to facilitate the administration of justice by the municipal court. See M.C. Sup. R. 17. While it is possible that a municipal court judge's workload may be eased and the functioning of her court expedited by a generous appropriation of funds from the legislative authority, city council's appropriation to the municipal court for necessary accommodations, personnel, and supplies will not provide a definite and direct, personal pecuniary benefit to the judge. Since the exercise of city council's discretion concerning the appropriation of funds for accommodations, law books, employees, supplies, and services is for the benefit of the court and not the definite and direct, personal pecuniary benefit of the judge, the city council member is not prohibited from participating in city council's consideration of the appropriation to the municipal court. See Advisory Opinions No. 85-006 and 88-004. R.C. 102.03(D) does not prohibit the city council member from voting, discussing, participating in deliberations or otherwise using his official authority to secure the city's annual appropriation to the municipal court.

Accordingly, in Advisory Opinion No. 90-004, the Commission held that a city council member is not prohibited from appropriating money to his spouse's agency for accommodations, law books, employees, supplies, and services since the appropriation would not be for the definite and direct, personal pecuniary benefit of the spouse. As noted above, the planning commission member receives no compensation for his service on the commission, and the actions of city council involve the review of the commission's substantive decisions on matters before it, and do not affect in any respect the pecuniary interests of the commission itself or the members thereof. Thus, it is even clearer in this instance that council's action in reviewing the decisions or recommendations of the planning commission would have no effect on the personal, financial interests of the council member's spouse who serves on the planning commission.

Therefore, in response to your first question, R.C. 102.03(D) does not prohibit a member of city council whose spouse serves on the city planning commission from participating in the review of, and action upon, the decisions or recommendations of the planning commission, including those decisions in which her spouse participated as a member of the planning commission, so long as the matter does not affect the personal, pecuniary interests of the city council member or her spouse. Both officials must be advised, however, that R.C. 102.03 (D) does prohibit a public official from using his or her position for the benefit of the official's spouse. See Advisory Opinion No. 89-008. Also, Division (B) of Section 102.03 prohibits a public official from disclosing confidential information. Each official should take every precaution to avoid the perception that he or she is acting in an official capacity to favor his or her spouse.

Your second question is whether the member of the city planning commission and the council member are prohibited from voting, discussing, or participating in deliberations on issues which concern customers of a bank, in light of the fact that the planning commission member is an employee of that bank, serving as a commercial loan officer. You have also stated that, not

only is the planning commission member employed by the bank, but that he owns shares of stock in the bank as part of a Section 401 K profit-sharing plan. See 26 U.S.C. §401. His wife is the designated beneficiary of the proceeds in the event of his death. Therefore, the question whether the planning commission member and city council member may participate in matters involving customers of the bank in light of the fact that the commission member owns stock in the bank, must also be addressed.

Prior to the enactment of Am. Sub. H.B. 300, 116th Gen A. (1986) (eff. Sept. 17, 1986), 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. 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. See Advisory Opinion No. 88-004. As stated in Advisory Opinion No. 88-004:

[I]t 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. (Emphasis in original.)

The Commission has, therefore, adopted the standard, discussed above, that a public official is prohibited from participating in a matter involving another party where the relationship between the official and the other party is such that the official's objectivity or independence of judgment could be impaired with regard to matters that affect the interests of that party. See Advisory Opinions No. 88-004, 88-005, 89-005, 89-008, and 90-008.

The opinion turns first to the question whether the planning commission member is prohibited from participating in matters involving the interests of customers of the bank on the basis that he is employed as a commercial loan officer with the bank.

R.C. 102.03(D) clearly prohibits a public official from participating in any matter which would affect his own personal, pecuniary interests. See Advisory Opinions No. 88-004 and 88-005. Further, in Advisory Opinions No. 88-005 and 89-008, the Commission held that R.C. 102.03(D), as amended by H.B. 300, prohibits a city official from participating in matters which directly affect the interests of his outside employer since his employer stands in a position of authority over the hiring, compensation, discipline, and termination of the official, thus indicating that the official's objectivity and independence of judgment with regard to matters involving the employer's pecuniary interests could be impaired. See also Advisory Opinion No. 80-003. The Commission has also held that a city official is prohibited by R.C. 102.03(D) from acting on a matter upon which a benefit to the private, pecuniary interest of the official is contingent, or upon which a benefit to the interests of certain parties such as his employer, is contingent. For instance, in Advisory Opinion No. 90-008, the Commission held that if client fees to a city council member's law firm were dependent upon a zoning change or other matter pending before council, then he would be prohibited by R.C. 102.03(D) from participating in that

matter, citing the example that if his law firm represented its client on the sale of property which was dependent upon the zoning change, then he would be prohibited from participating on the question of the zoning change. See also Advisory Opinions No. 76-005, 79-003, 79-008, and 88-005. Therefore, R.C. 102.03(D) would prohibit the planning commission member, in this instance, from participating in any matter that would directly affect his own interests as a bank employee or the interests of the bank, his employer, or where he or the bank would have a contingent interest in the outcome of the planning commission's decision or recommendation. For example, if a customer wished to secure a loan from the bank to finance a construction or development project, but initiation of the project was dependent upon the planning commission approving rezoning of the property, then the bank's financial interests would be dependent upon the planning commission's action and the planning commission member would be prohibited from participating in the matter.

R.C. 102.03(D) would not, however, prohibit, per se, the planning commission member from participating in matters affecting the interests of a customer of the bank. In Advisory Opinion No. 90-008, the Commission addressed an issue similar to the one you have raised, with respect to a city council member who was also an attorney in private law practice. The Commission first held that R.C. 102.03(D) would prohibit the council member from participating in matters pending before city council if an employee or partner of his law firm were representing a client on that specific matter pending before council, or had provided consultation and advice to the party which was presenting the matter to council. See also Advisory Opinion No. 89-016. The Commission went on to hold, however, that R.C. 102.03(D) would not generally prohibit a city council member from participating in a matter pending before city council which is brought by a party who is a client of his law firm, but is not represented by the law firm on the matter before council, unless the relationship between the council member and client is such that the council member's independence of judgment could be impaired with regard to matters that affect the interest of that party. As stated in Advisory Opinion No. 90-008:

Generally, the mere fact that a party is also a client of an official's law firm would not be sufficient to require the official to abstain from matters involving the client's interests. There may be some circumstances, however, where R.C. 102.03(D) would prohibit a public official from acting on matters involving a client. The facts and circumstances of each case must be examined to determine if the nature of the relationship between the public official and the client is such that his objectivity and independence of judgment could be impaired. See Advisory Opinion No. 88-004. For example, if the public official himself is currently representing a client on other matters, he would be prohibited, by R.C. 102.03(D), from acting in his official capacity on any matter which could benefit the client. In addition, you should note that any action you take with respect to your law firm's clients may create an appearance of impropriety because of the relationship between your law firm and its clients.

Similarly, in this instance, the city planning commission member would not be prohibited, in all circumstances, from participating in a matter involving the interests of a party on the basis that he is employed by a bank, and the party is a customer of the bank. Cf. Advisory Opinion No. 86-002 (R.C. 2921.42 (A)(1), which prohibits a public official from authorizing a public contract in which a business associate has an interest, would not prohibit a public official from authorizing a public contract to a firm that is a client or customer of his insurance agency).

For example, the mere fact that a customer has a household checking account with the bank would be insufficient to indicate that the commission member could not impartially fulfill his official duties with regard to a matter before the planning commission, which would affect the interests of that customer. The possibility that the planning commission member's objectivity could be impaired, in that instance, would be too remote.

However, if the commission member is, in his capacity as a bank employee, negotiating or conducting business with that customer, then the commission member's interest in retaining the customer's business and performing well for his employer could impair his objectivity and independence of judgment. See Advisory Opinions No. 88-004 and 90-008. Also, if the planning commission's recommendation or decision could result in the loss of the customer's continued business with the bank, then, again, the planning commissioner's objectivity and independence of judgment could be impaired with respect to that party, since his employer's pecuniary interests could be affected. Again, the standard is whether the relationship between the commission member and the customer is such that the commission member's objectivity or independence of judgment could be impaired with regard to matters that affect the interests of the customer. Id. The facts and circumstances of each case must be examined in order to ascertain this issue. Id. However, the planning commission member is not, as a general matter, prohibited from participating in matters affecting the interests of a customer of the bank, unless the interests of the bank or the commission member, as an employee of the bank, would also be affected. It should be noted, however, that the commission member's participation in matters affecting the bank's customers may create the appearance of impropriety. See Advisory Opinion No. 90-008.

Of course, in any instance, a customer of the bank must refrain from promising to take any action regarding its relationship with the bank with the purpose of improperly influencing the planning commission member with respect to his duties. The commission member is prohibited from soliciting or accepting anything of value for the bank in exchange for the performance of his official duties, and from basing any official decisions, actions, or instructions on the basis of the bank's interests with respect to a customer. Such conduct by a customer or the commission member would be in violation of R.C. 102.03, and possibly other criminal statutes that are outside the scope of the Ethics Commission's jurisdiction. See Advisory Opinion No. 89-002; R.C. 2921.02. Furthermore, the bank is prohibited from promising or offering anything of value to the planning commission member as an employee of the bank with the purpose of influencing the official actions or decisions of the commission member with respect to a bank customer, and the planning commissioner is prohibited from accepting anything of value from the bank to improperly influence him with respect to the discharge of his official duties, and from basing any official actions, or instructions on the bank's treatment of him as an employee. Id.

You have also asked whether the council member is prohibited from participating in matters involving customers of the bank on the basis that the bank employs her spouse. Part of your question includes situations where an applicant for an economic development grant has also received assistance from her spouse's bank. In those instances, the bank itself may have at least a contingent interest in city council's decision. In Advisory Opinion No. 89-008, the Commission held that R.C. 102.03(D) would prohibit a city council member from participating in consideration of a company's application for a tax abatement where the council member's spouse

or child is employed by the company and would receive a definite and direct benefit from the tax abatement. The opinion went on to conclude, however, that R.C. 102.03 (D) would not prohibit a city council member from participating in council's consideration of a tax abatement for the employer of a family member in instances where the family member has no direct interest in the tax abatement. In support of this conclusion, the opinion cites Advisory Opinion No. 88-005, in which the Commission considered whether a member of a city planning commission was prohibited by R.C. 102.03 (D) from participating in a zoning change affecting the interests of a community improvement corporation where his daughter worked at a bank and was supervised by a person who was the bank's executive vice-president and who also served as the president of the CIC. The Commission held that, in those circumstances, the relationship between the planning commission member and CIC president was so remote that the president's interest in the zoning change would not impair the objectivity and independence of judgment of the planning commission member.

In this instance, the city council member would not, as a general matter, be prohibited by R.C. 102.03 (D) from participating in matters involving customers of the bank which employs her husband, since the relationship between the council member and those customers would be so remote that the customers' interests in matters pending before the council would not be of such character as to manifest a substantial and improper influence upon the council member. However, if her husband would derive a definite and direct personal pecuniary benefit from council's action, then the council member would be prohibited from participating in that matter.

This opinion turns now to the issue whether the planning commission member and council member are prohibited from participating in matters involving customers of the bank, on the basis that the planning commission member owns stock in the bank, and therefore, has a pecuniary interest in the bank. As noted above, the Commission has held that a public official is prohibited from participating in a decision upon which a benefit to his private, pecuniary interests is dependent or contingent. See Advisory Opinions No. 88-005 and 90-008. In Advisory Opinion No. 86-002, the Commission held that a city council member who is an officer and shareholder of an insurance agency is prohibited from authorizing or using his official position to secure approval of a city contract in which his firm provides a bond or has some other interest. R.C. 102.03(D) would, therefore, prohibit the planning position member, as a stockholder in the bank, from participating in any matter affecting the interests of a bank customer where the bank would also have a direct or contingent interest, as discussed above. See Advisory Opinion No. 90-008.

Advisory Opinion No. 86-002 did not, however, extend the applicability of R.C. 102.03(D) to hold that the city council member was prohibited from voting to approve city contracts to business clients of the firm where the firm would have no interest in the matter. (The opinion did specifically hold that R.C. 2921.42(A)(1), which prohibits a public official from authorizing a public contract in which he or any of his business associates has an interest, would not prohibit the city council member from authorizing or using the authority or influence of his office to secure approval of a public contract with a firm that is a client or customer of his agency, unless his agency would provide a bond on the contract or would otherwise have a direct interest in the contract.) Advisory Opinion No. 86-002 was, however, rendered prior to the expansion of R.C. 102.03(D) in H.B. 300, as discussed above, and the issue must still be

addressed whether the official is prohibited from participating in matters affecting the interests of bank customers in situations where the bank itself would have no interest in the outcome of the matter.

R.C. 102.03(D) would not, in all instances, prohibit the planning commission member from participating in matters affecting the interests of a party, on the basis that the party is a customer of the bank. Each case must be examined on its own facts, utilizing the standard, set forth above, whether the official's objectivity or independence of judgment could be impaired with regard to matters affecting the interests of the customer. In most instances, the relationship between the official and a customer would be so remote that the customer's interests would not be of such character as to manifest a substantial and improper influence upon the commission member. Again, the official is not, as a general matter, prohibited from participating in a matter affecting the interests of a bank customer, unless the interests of the bank would also be affected by, or contingent upon, the city's actions. However, such participation may, again, create the appearance of impropriety. See Advisory Opinion No. 90-008.


The city council member would also be prohibited from participating in any matter affecting the interests of a bank customer where the bank, and thus, her spouse as a stockholder, would also have a direct or contingent interest in the matter, since R.C. 102.03(D) prohibits a public official from participating in any matter which affects the financial interests of her spouse. See Advisory Opinion No. 89-008. She would not otherwise be prohibited, however, from participating in a matter solely on the basis that the matter would affect the interests of a bank customer. Any potential conflict of interest would be too remote so as to require the city council to abstain from participating in the matter. The fact that the council member herself is the named beneficiary of her husband's stock interest in the case of her husband's death would not otherwise require the council member to abstain on matters where the bank and its stockholders would have no interest.

As discussed above, however, the officials are prohibited from soliciting or accepting anything of value from the bank or a customer in exchange for the performance of his or her official duties, and from basing any official decisions or actions on the bank's interests or a customer's interests with respect to the bank. The bank and the bank's customers are prohibited from promising or giving anything of value to the officials with the purpose of improperly influencing them with respect to their duties.

This advisory opinion is based on the facts presented, and is rendered only with regard to questions arising under Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code.

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 member of city council whose spouse serves as an uncompensated member of the city planning commission from participating in council's review of, and action upon, the decisions or recommendations of the planning commission, including those matters in which her spouse participated, so long as the matter does not affect the personal pecuniary interests of the city council member or her spouse; (2) Division (D) of Section 102.03 prohibits a city planning commission member from participating in any matter that would directly affect the interests of the bank that employs him or his own interests

as an employee of the bank, or in any matter where he or the bank would have a contingent interest in the outcome of the planning commission's decision or recommendation. Division (D) of Section 102.03 would not, however, prohibit, per se, the planning commission member from participating in matters affecting the interests of a customer of the bank, unless the relationship between the commission member as a bank employee and the customer is such that the commission member's objectivity or independence of judgment could be impaired with regard to matters that affect the interests of the customer; (3) Division (D) of Section 102.03 of the Revised Code would not, as a general matter, prohibit a city council member whose spouse is employed by a bank from participating in matters involving customers of the bank, unless her spouse would derive a definite and direct personal pecuniary benefit from council's action; (4) Division (D) of Section 102.03 of the Revised Code prohibits a city planning commission member who owns stock in a bank from participating in any matter affecting the interests of a bank customer where the bank would also have a direct or contingent interest in the outcome of the planning commission's decision or recommendation. Division (D) of Section 102.03 would not, however, prohibit, per se, the planning commission member from participating in a matter affecting the interests of a bank customer where the bank itself would have no interest in the outcome of the matter, unless the relationship between the commission member and the customer is such that the commission member's objectivity or independence of judgment could be impaired with regard to matters that affect the interests of the customer; and (5) Division (D) of Section 102.03 of the Revised Code prohibits a city council member from participating in any matter affecting the interests of a customer of a bank in which her spouse owns stock, where the bank would also have a direct or contingent interest in the matter. She would not otherwise be prohibited, however, from participating in a matter solely on the basis that the matter would affect the interests of a bank customer.



Dr. David L. Warren, Chairman
OHIO ETHICS COMMISSION