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Paul M. Nick
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Advisory Committee Minutes

Monday, March 31, 2020

Present:

Bruce Bailey, Megan Kelley, Julie Rutter, Commission Members

John Rawski, Staff Attorney
Karen King, Chief Advisory Attorney
Tim Gates, Staff Attorney
Jed Hood, General Counsel
Paul Nick, Executive Director

The meeting began at 2:07 p.m. by teleconference.

Mr. Nick began the discussion by going over the meeting agenda.

Mr. Rawski introduced the informal opinion draft for John Greenhalge, Executive Director of the State Board of Registration for Professional Engineers and Surveyors (Board). Mr. Greenhalge had asked if a county engineer who has a financial interest in a subdivision development can legally cede his duties under R.C. 711.09 to inspect the subdivision roads constructed within three miles of the corporate limits and have the county engage an independent consulting engineer to perform the required inspections.

Mr. Bailey had submitted his questions and comments regarding the informal draft in writing prior to the meeting. The Committee members and staff discussed Mr. Bailey's questions and concerns. Mr. Bailey asked about the reason behind Mr. Greenhalge's request. He noted that Mr. Greenhalge focused on R.C. 711.09 but that that the advisory opinion would apply to any roads in the county, not just the roads within 3 miles of the corporate limit. Mr. Nick said that Mr. Greenhalge and a county engineer met with him and Ms. King with questions regarding whether a county engineer could withdraw from his duties under R.C. 711.09 from matters that would affect a development in which he or his family member had an interest. Mr. Nick said that he requested Mr. Greenhalge submit his questions in writing.

Ms. Kelley suggested that staff go back to Mr. Greenhalge to pin down his question and find out exactly what and whose financial interests are at stake.

Mr. Bailey questioned the need to reference R.C. 315.251(B) in the draft. Mr. Rawski said the statute was referenced as an example of the legislature's ability to create an exception to address conflicts of interest.

Mr. Bailey noted R.C. 325.14, which permits a county engineer to elect to engage in private practice. Mr. Nick said that staff will research whether other county elected officials have the statutory authority to engage in private practice.

Mr. Bailey questioned the portion of the opinion draft that referred the requester to the appropriate county prosecutor regarding a county engineer's ability to legally cede his authority under R.C. 711.09 and the county's ability to engage an independent consulting engineer to perform required inspections. Ms. King noted that the opinion was not deferring the conflict of interest determination to the prosecutor but rather referring the requester to the prosecutor to analyze those laws or rules that may be applicable to the question but that are not part of the Ethics Law. Mr. Nick said that this portion of the opinion could be rephrased to make it clearer. The Committee members agreed.

Mr. Bailey asked if there was any Commission precedent that discusses Ohio Attorney General (OAG) Opinion No. 1990-087. Mr. Rawski said that the question addressed in the OAG opinion regarding a county engineer engaging in the private practice of engineering is a different question with a different analysis as compared to the Mr. Greenhalge's request.

Ms. Kelley and Mr. Bailey questioned the use of the standard "high-level public official exercising unique authority from which they cannot withdraw." Mr. Bailey noted that this is an issue in recent county auditor opinions written by staff that the Commission may be asked to reconsider. Mr. Nick noted that the Commission has not yet received the request for reconsideration. He also noted that an example of a "high-level" public official is an elected office holder.

The Committee members asked staff to contact Mr. Greenhalge to get a better/clearer understanding of his question and the totality of possible financial interest(s) involved. Mr. Bailey asked that staff email the information from Mr. Greenhalge to the Committee members before redrafting the informal opinion.

Next, Mr. Hood reviewed changes in the 2020-01 Formal Opinion Draft. He said that after a discussion with OAG staff, Commission staff added cautionary language to the formal draft that made it clear that an executive session does not in and of itself create a confidentiality requirement. He said that he incorporated language from a 1986 staff opinion (Buck). The Committee members agreed with the edits.

Mr. Nick updated that Committee members on staff's teleworking protocols and informed the members that the advisory staff is still busy and staying on top of their regular duties. Ms. Rutter commended staff on keeping Commission operations up and running during this time. Mr. Nick introduced the new Staff Advisory Attorney, Tim Gates. The Committee members welcomed Mr. Gates.

The meeting was adjourned at 2:50pm.