



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

May 11, 1989

Informal Opinion 1989-INF-0511-1

George L. Engel
U.S. Department of Housing and
Urban Development
Cleveland Office, Region V

Dear Mr. Engel:

You have asked whether the Ohio Ethics Law and related statutes prohibit the law firm in which the President of Cleveland City Council is a partner from representing clients which do business with the Cuyahoga Metropolitan Housing Authority in light of the fact that the Cleveland City Council appoints two members of the board of directors of the CMHA pursuant to R.C. 3735.27.

Division (A)(4) of Section 2921.42 of the Revised Code provides:

(A) No public official shall knowingly do any of the following:

...

(4) 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 he is connected.

R.C. 2921.42 defines the term "public official" to include any elected or appointed officer or employee of a political subdivision. See R.C. 2921.01(A). A city council member is, therefore, subject to R.C. 2921.42, see Ohio Ethics Commission Advisory Opinions No. 85-008 and 86-002, and is prohibited from having an interest in any public contract entered into by or for the use of any political subdivision with which he is connected. See R.C. 2921.42(E) (defining "public contract" for purposes of R.C. 2921.42 to include the purchase or acquisition, or a contract for the purchase or acquisition of property or services by or for the use of a political subdivision and a contract for the design, construction, alteration, repair, or maintenance of any public property).

A member of the Cleveland City Council may be deemed to be "connected" with the CMHA for purposes of R.C. 2921.42(A)(4) in light of the fact that the Council appoints two members to the board of directors of the CMHA and that the City is included within the territorial boundaries of the CMHA. See Advisory Opinion No. 89-004. In order to be prohibited under R.C. 2921.42, however, the interest of the public official must be a definite and direct interest, and may be either pecuniary or fiduciary in nature. See Advisory Opinions No. 78-005, 81-003, 81-008, and 86-002. Thus, the issue is whether the Council President's law firm, and, therefore, the partners in the law firm who share in a distributive share of the firm's earnings, have a definite and direct interest in the public contracts between the CMHA and the law firm's clients. In

Advisory Opinion No. 78-005, the Ethics Commission held that a partner in an accounting firm did not have a sufficiently definite and direct interest under R.C. 2921.42 in the issuance of industrial revenue bonds to a company (a public contract) where his sole interest in the issuance was a distributive share of the fees earned by his accounting firm for services rendered to the company seeking the bonds. The opinion notes that an accountant is not considered to have an "interest" in the business dealings of his client merely because he receives a fee for professional services rendered for his client. As the Ethics Commission further stated in Advisory Opinion No. 86-002: "It would be unreasonable to hold that lawyers, accountants, insurance agents, and other professionals have an interest in the contracts of their business clients. In general, such professionals are not deemed to be interested in the business dealings of a client, merely because they receive fees for professional services." Therefore, under the facts presented, the law firm does not have a definite and direct interest in a public contract entered into between its clients and the CMHA, and R.C. 2921.42(A)(4) would not prohibit the law firm from serving as legal counsel to parties who have contracted with the CMHA on the grounds that a partner with the law firm also serves as a member of City Council.

Your attention is also directed to Division (C) of Section 102.04 of the Revised Code, which provides, in pertinent part:

Except as provided in Division (D) of this section, no person who is elected or appointed to an office of or employed by a county, township, municipal corporation, or any other governmental entity, excluding the courts, shall receive or agree to receive directly or indirectly compensation other than from the agency with which he serves for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter which is before any agency, department, board, bureau, commission, or other instrumentality, excluding the courts, of the entity of which he is an officer or employee.

Division (C) of Section 102.04 would prohibit the President of City Council from receiving compensation from a private client for personal services rendered on a matter before the CMHA. (Division (D) of Section 102.04 provides an exception to the prohibition of Division (C) but is unavailable to elected officials.) R.C. 102.04(C) would not, however, prohibit him from receiving a distributive share of partnership profits generated by the personal services of other members of the firm representing clients before the CMHA, provided he does not personally render the legal services. See Advisory Opinions No. 74-009 and 86-004. Division (E) of Section 102.03 prohibits a public official or employee from accepting anything of value that is of such character as to manifest a substantial and improper influence upon him with respect to his official duties. R.C. 102.03(E) would not prohibit the President of Council from accepting a distributive share of clients' fees for work performed by members of his firm on matters before the CMHA in light of the fact that he does not serve on the CMHA and would be prohibited by R.C. 102.04(C) from personally rendering any services on matters before the CMHA.

Division (A) of Section 102.03 would prohibit the Council member from representing clients before the CMHA, City Council, or any other public agency on any matter in which he personally participated as a Council member, and Division (B) of Section 102.03 would prohibit him from using or disclosing, without appropriate authorization, confidential information to his law firm, its clients, or any other party.

As a final matter, Division (D) of Section 102.03 states:

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

In this instance, City Council appoints two members to the board of directors of the CMHA. The President of City Council, therefore, serves in a position of authority over the board of directors of the CMHA. He is prohibited by R.C. 102.03(D) from using that authority, formally or informally, to secure contracts or business for his law firm or its clients from the CMHA. See Advisory Opinion No. 89-004.

This informal advisory opinion was approved by the Ohio Ethics Commission at its meeting on May 11, 1989. The opinion is based upon the facts presented and is limited to questions arising under Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code. If you have any questions, please contact me.

Sincerely,



Melissa A. Warheit
Executive Director

MW/pg