



OHIO ETHICS COMMISSION
THE ATLAS BUILDING
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COLUMBUS, OHIO 43215-2940
(614) 466-7090

June 7, 1991

Informal Opinion 1991-INF-0607

Denny T. Salisbury, P.E.
Pike County Engineer's Office

Dear Mr. Salisbury:

You have asked if the Ohio Ethics Law and related statutes prohibit companies, in which your family members have a financial interest, from doing business with, or for the benefit of, the county with which you serve.

By way of history, you have explained that you serve as the Pike County Engineer. You have explained that a highway construction business in Pike County, Dial Construction Company (Dial), is currently owned by your father, three of your uncles, your aunt, and your cousin.

You have first asked under what circumstances Dial may perform contract work for the county highway department if the work is not competitively bid. Second, you have asked under what circumstances Dial may perform bid contracts for the county highway department, if those contracts are under the direct control and supervision of the County Engineer. Some of these contracts would involve the use of local county funds only, and some would involve the use of both local county funds and state funds. Third, you have asked under what circumstances Dial could perform contract work on highway or bridge projects located in Pike County, where the projects are supported by the County Engineer's Office, but are under the direct control of ODOT, and where the projects require competitive bidding and are funded by federal and local county funds.

In a separate letter, the Ethics Commission staff has answered these questions with regard to Dial as the company presently exists. You have also asked if Dial is subject to the same prohibitions if your father relinquishes his interest in the company. If your father did relinquish his interest, the remaining stockholders would be your three uncles, one aunt, and one cousin.

The first relevant section is R.C. 2921.42 (A)(1). That section provides as follows:

(A) No public official shall knowingly:

. . .

(1) Authorize, or employ the authority or influence of his office to secure authorization of any public contract in which he, a member of his family, or any of his business associates has an interest.

A "public official" is defined, for purposes of R.C. 2921.42, in R.C. 2921.01 (A), to include any elected or appointed officer of the state or any subdivision of the state. Therefore, a county engineer is a "public official" for purposes of R.C. 2921.42. See Ohio Ethics Commission Advisory Opinion No. 85-003. A "public contract" is defined for purposes of R.C. 2921.42 as "[t]he purchase or acquisition, or a contract for the purchase or acquisition of property or services by or for the use of the state or any of its political subdivisions, or any agency or instrumentality of either . . . [or a] contract for the design, construction, alteration, repair, or maintenance of any public property." See R.C. 2921.42 (E). Contracts entered into by the county for goods or services or for the construction or maintenance of county property falls within this definition. See Advisory Opinion No. 90-003. These contracts would be considered to be "public contracts" entered into by the county, regardless of whether they are funded solely by county moneys or by state and county moneys. In addition, construction contracts entered into by ODOT or the federal government which are for the use of the county, and which are paid for by federal and county funds and supported by the county engineer's office fall within the definition of "public contract" for purposes of R.C. 2921.42. Id.

Division (A)(1) of Section 2921.42 would prohibit you, as county engineer, from authorizing or using the authority or influence of your position, formally or informally, to secure authorization of, any public contract in which a member of your family has an interest. For purposes of this section, a member of a public official's family includes, but is not limited to: 1) grandparents; 2) parents; 3) spouse; 4) children, whether dependent or not; 5) grandchildren; 6) brothers and sisters; or 7) any person related by blood or marriage and residing in the same household. See Ohio Ethics Commission Advisory Opinion No. 80-001. Your father is a family member for purposes of R.C. 2921.42 (A)(1). Your uncles, aunts, and cousins are also family members for purposes of the prohibition if they reside in the same household with you.

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As stated in the earlier opinion, if your father is a stockholder in Dial Construction, then you are prohibited by R.C. 2921.42 (A)(1) from voting, deliberating, discussing, or otherwise authorizing or employing the authority or influence of your office formally or informally, to secure authorization of the public contracts for Dial Construction. Id. In addition, you are prohibited from participating in the bid process involving Dial, securing or approving contract payments for Dial, and from using your authority or influence over or with county, state, and federal officials and employees to secure a public contract for Dial. See Advisory Opinion No. 89-006. See also R.C. 2921.42 (C)(4). If your father relinquishes all of his interests in Dial Construction, R.C. 2921.42 (A)(1) would still prohibit you from acting to authorize or secure public contracts for Dial Construction if any one of your uncles, your cousin, or your aunt who owns stock in Dial resides in the same household with you.

The issue remains, however, whether you are prohibited from acting where your father has no interest in the contract, and your uncles, your aunt, and your cousin do not reside in the same household with you. You are not prohibited, by R.C. 2921.42 (A)(1), from acting with regard to a contract involving Dial, if neither your father, nor any other individual who falls within the definition of "family member," as set forth in Advisory Opinion No. 80-001, has a financial or fiduciary interest in Dial.

You are, however, also bound by the provisions of R.C. 102.03 (D). Division (D) of R.C. 102.03 states as follows:

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 or improper influence upon him with respect to his duties.

The term "public official or employee" is defined for purposes of R.C. 102.03 (D) to include any person who is elected or appointed to an office of a county. See R.C. 102.03 (B) and (C). A county engineer is a "public official or employee" for purposes of R.C. 102.03 (D). See Advisory Opinions No. 83-001 and 85-003.

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, 88-004, 89-002, and 90-004. Payments or any other benefit under a contract are within the definition of "anything of value" for purposes of R.C. 102.03 (D).

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The Ethics Commission has held that a public official is prohibited by R.C. 102.03 (D) from using the authority or influence of his office to secure anything of value for himself, or for any other party if the relationship between the public official and the other party is such that the official's objectivity and independence of judgment could be impaired with regard to matters which affect the interests of that party. See Advisory Opinions No. 88-004, 88-005, 89-005, 89-008, and 90-004. The Commission has held that R.C. 102.03 (D) prohibits a public official from participating in a matter which would directly affect the private financial interest of the public official's family members. See Advisory Opinions No. 82-003, 88-004, 89-005, and 90-004. Specifically, you, as county engineer, are prohibited from using your position to secure any contracts for a business in which your family members have a financial interest, from securing payments for the business under any such contracts, and from reviewing any work which was performed by the business in which your family members have an interest. See Advisory Opinions No. 89-005 and 90-008.

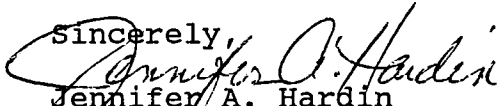
The Ethics Commission has held that the application of R.C. 102.03 (D) is based upon the facts and circumstances of each particular case. See Advisory Opinion No. 86-011. The standard in judging whether a public official may participate in a matter is whether his objectivity, unbiased discretion, and independence of judgment could be impaired with regard to that matter. See Advisory Opinion No. 88-004. In the situation that you have described, five of your relatives would continue to hold stock in Dial, and indeed, would be the only stockholders in the corporation, even if your father severs his ties with the company. You have explained that the construction contracts would be under the direct control and supervision of the county engineer's office or supported by the county engineer's office. It is apparent that your independence of judgment and objectivity as county engineer could be impaired with respect to matters involving Dial due to the direct financial interest in Dial held by five of your relatives. Therefore, R.C. 102.03 (D) prohibits you from discussing, deliberating, or otherwise participating or using your official position in any manner as county engineer with respect to any projects being performed by Dial Construction, even if your father relinquishes his ownership interest in the company. You are prohibited from taking any official action to secure any contracts, contract payments, or anything else of value for Dial Construction. Further, you are prohibited, by R.C. 102.03 (D), from reviewing, in your official capacity, any work performed by Dial. See Advisory Opinions No. 89-005. The county engineer is statutorily required to perform all inspections and surveys with regard to county projects. See R.C. 315.10 and 315.14. A county engineer is responsible for all actions taken by the engineer's office. Dial may not, therefore, enter into or perform contracts where the

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county engineer would be required to review, supervise, inspect, or approve such contracts or the work performed thereunder, even in situations where the county engineer does not award the contract. See Advisory Opinion No. 90-010. See generally Advisory Opinion No. 90-007.

This informal advisory opinion was approved by members of the Ethics Commission on June 6, 1991, and is based on the facts presented. It is rendered with respect to questions arising under Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code, and does not purport to interpret other laws or rules. If you require additional information or wish to request a formal advisory opinion, please contact me.

Sincerely,



Jennifer A. Hardin
Staff Attorney