

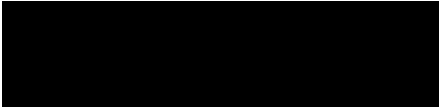


OHIO ETHICS COMMISSION
THE ATLAS BUILDING
8 EAST LONG STREET, SUITE 1200
COLUMBUS, OHIO 43215-2940
(614) 466-7090

October 21, 1993

Informal Opinion 1993-INF-1021-1

Dwight Tillery, Mayor
City of Cincinnati



Dear Mr Tillery:

In your letter to the Ethics Commission you ask whether the Ohio Ethics Law and related statutes prohibit you from participating on a matter pending before city council which may affect the financial interests of a client of your employer and/or a competitor of your employer's client.

You state that you are the mayor and a member of city council for the City of Cincinnati (City) and are privately employed as an associate for a law firm. It is assumed that, as an associate, you are paid a salary but do not receive a distributive share of the law firm's profits.

You state that, in June 1993, an advisory panel recommended that the City assist a department store chain construct a new store on a downtown site as a means of fostering downtown development. You also state that the advisory panel recommended that the City take steps to strengthen other downtown retailers.

You state that after the advisory panel made its recommendations, another department store chain with a location in the City's downtown also expressed an interest in constructing a new store on the downtown site. You also state that this department store chain retained the law firm with which you are employed to represent its interests in this matter, including its desire to construct a new store on the downtown site. However, you further state that your duties with your employer do not include providing legal services for the department store chain.

You state that your employer's client maintains that the receipt of City aid to its competitor in constructing a store on this site would economically disadvantage their own downtown operation. It is the Commission's understanding that both department store chains claim that the continuation of their downtown retailing operations may depend upon the City providing them aid in constructing a new store on the downtown site.

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You state that in September, 1993, the city manager announced that the City had reached a tentative agreement with the competitor of your employer's client to construct a store on the downtown site. You also state that the agreement is contingent upon approval by city council, but that city council has not yet voted on the matter.

Your question whether you are prohibited from participating on matters before city council which may affect the financial interests of a client of your employer and/or a competitor of your employer's client implicates the prohibitions imposed by R.C. 102.03 (D) and (E) which read:

- (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 a character as to manifest a substantial and improper influence upon him with respect to his duties.
- (E) No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties.

An individual serving as mayor and a member of city council is a public official for purposes of R.C. 102.03 (D). 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. 102.03 (G). A definite and direct pecuniary benefit is considered to be a thing of value under R.C. 102.03 (D) and (E). See Ohio Ethics Commission Advisory Ops. No. 79-008, 85-006, 85-011, 86-007, 88-004, 89-005, and 90-004. A fee from a client for legal services is a thing of value for purposes of R.C. 102.03 (D) and (E). See Advisory Ops. No. 86-004, 89-015, 89-016, and 90-008.

The Ethics Commission has consistently held that R.C. 102.03 (D) prohibits a public official from using the authority or influence of his office to secure anything of value for himself, or for another person or entity if the relationship between the official and that person or entity could impair the official's objectivity and independence of judgment with regard to matters that affect that person or entity. See Advisory Ops. No. 88-004, 88-005, 89-015, 89-016, 90-007, 90-008, and 91-004.

In Advisory Opinion No. 89-016 the Ethics Commission addressed the issue of a public official who is an associate for a law firm participating in a matter where his employing law firm is representing a client on the same matter before the official's political subdivision, holding:

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[t]he relationship between [a public official] and his employing law firm and law partners and associates indicates that his objectivity and independence of judgment could be impaired in considering a matter in which his law firm and law partners or associates are interested, and that R.C. 102.03 (D) would prohibit [the public official] from participating in matters in which his law is involved even though he does not personally receive a share of the client fees.

Also, in Advisory Opinion No. 90-008, the Commission held that R.C. 102.03 (D) prohibits a city council member who is employed by a private law firm from voting, discussing, or otherwise using the authority or influence of his official position, formally or informally, with regard to a matter pending before city council if an employee or partner of his employing law firm either: (1) is representing a client on that specific matter pending before city council; or (2) has provided consultation and advice to the party which is presenting the matter to city council. See also Advisory Op. No. 91-004 (a city planning commission member is prohibited from participating in a matter that would directly affect the pecuniary interests of his private employer or his own interests as an employee, or in any matter where he or his employer would have a contingent interest in the planning commission's decision).

In the instant situation, since the department store chain has specifically retained your employing law firm to represent its interests in this matter, the relationship between you and your employing law firm could impair your objectivity and independence of judgment in this matter. Accordingly, R.C. 102.03 (D) prohibits you from voting, taking part in discussions or deliberations, or otherwise participating, formally or informally, in city council's consideration of the development of the downtown site by either the client of your employing law firm or the client's competitor.

Also, R.C. 102.03 (E) prohibits you from accepting a share of the client fees earned by members of the law firm with which you are employed for representing the department store on a matter pending before city council even though you do not participate in city council's decision. See Advisory Ops. No. 89-016 and 90-008. Furthermore, you should note that R.C. 102.04 (C) prohibits you from receiving compensation for rendering services personally on any matter pending before any entity of the city. Id.

As a final matter, your attention is directed to R.C. 102.03 (B), which reads:

- (B) No present or former public official or employee shall disclose or use, without appropriate authorization, any information acquired by him in the course of his official duties which is

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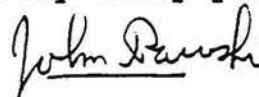
confidential because of statutory provisions, or which has been clearly designated to him as confidential when such confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary to the proper conduct of government business.

R.C. 102.03 (B) prohibits you from disclosing confidential information which you acquired in your position as mayor and member of city council to your employing law firm or any other person, or using such information, without appropriate authorization. See Advisory Op. No. 89-006. This limitation is applicable during your public service, and after, and remains in effect as long as the information remains confidential. Id.

You should also be aware that your question may also raise issues concerning the professional conduct of attorneys under the Code of Professional Responsibility. These issues are not within the Ethics Commission's jurisdiction but should be referred to the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court.

This advisory opinion embodies a decision rendered by the Ethics Commission at its meeting on October 18, 1993. The opinion is based on the facts presented and is limited to questions arising under Chapter 102. of the Revised Code and does not purport to interpret other laws or rules. If you have any questions, please feel free to contact this Office again.

Very truly yours,



John Rawski
Staff Attorney

Enclosure

Advisory Opinion No. 90-008