

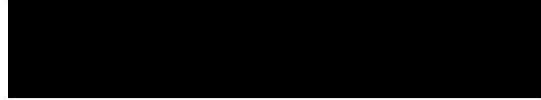


OHIO ETHICS COMMISSION

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

December 3, 1993 Informal Opinion 1993-INF-1203-2

Victoria L. Miller, Esq.
Office of the Consumers' Counsel



Dear Ms. Miller:

You have asked whether the Ohio Ethics Law and related statutes prohibit you, if you hold the position of acting Consumers' Counsel, from participating in your official capacity in matters that affect the interests of several companies with which your spouse has business relationships.

You have explained that your spouse has various connections with two entities that may be affected by actions taken by the Office of the Consumers' Counsel (OCC). The two entities are Afford-A-Call Corporation (Afford-A-Call) and LCI International Telecom Corporation (Telecom). You have stated that your spouse is an employee and an officer (Assistant Secretary) of LCI International Management Services, Inc. (LCIMS), which owns all of the issued and outstanding common stock of Afford-A-Call and Telecom. Your spouse is also an officer (Assistant Secretary) of Afford-A-Call and Telecom. Your spouse is not on the board of directors of LCIMS, Afford-A-Call, or Telecom. Finally, you have explained that LCI International, Inc. (LCII) owns all of the issued and outstanding stock of LCIMS and that your spouse is a stockholder of LCII. The total of your spouse's current stockholdings, and those he has an option to buy in the future, amounts to less than 0.02% (2/100ths of 1 percent) of the issued and outstanding stock of LCII.

Afford-A-Call and Telecom are both within the class of companies regulated by the Public Utilities Commission of Ohio (PUCO). Because the PUCO regulates these companies, the Office of the Consumers' Counsel may be involved in matters that affect the companies. The Consumers' Counsel, who holds the statutory authority to act within her office, may have to take actions that involve the interests of these companies or supervise the employees of her office in actions that involve the interests of these companies.

Division (D) of Section 102.03 of the Ohio Revised Code prohibits a public official from using the authority or influence of her public position to secure anything of value that could have a substantial and improper influence upon her with respect to her public duties. The Commission has stated that a public official is prohibited from participating in matters where her spouse would receive a definite and direct benefit or where her objectivity and independence of judgment could otherwise be impaired by her spouse's interests. See Ohio Ethics Commission Advisory Ops. No. 90-004 and 92-010.

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Several aspects of your question are issues that have been well-settled by the Ethics Commission. The Commission has stated that R.C. 102.03 (D) does not prohibit a public official from participating in matters that affect the interests of her spouse's employer, unless her spouse would receive some definite and direct benefit from the action. See Advisory Op. No. 89-008. However, a public official is generally prohibited from participating in matters which would benefit the interests of a company in which her spouse owns stock. See Advisory Op. No. 91-004. Finally, ownership of a diminutive percentage of stock will not have a substantial influence on a public official where the interests of the company are before her in her official capacity, and, therefore, the official is not prohibited, by R.C. 102.03 (D), from participating in official matters that affect the interests of a corporation in which she owns a diminutive percentage of stock. See Advisory Op. No. 93-001.

In this case, your spouse is employed by a company that owns companies subject to regulation by the PUCO, and owns stock in the company which is the parent of his employer. He has no direct involvement in PUCO matters and owns only a de minimis percentage of shares in the parent company of his employer. These facts do not suggest that your spouse would receive a direct and definite benefit from any actions taken by the OCC in matters affecting Afford-A-Call and Telecom.

However, you have explained that your spouse is also an officer (Assistant Secretary) in LCIMS, Afford-A-Call, and Telecom. Both you and your spouse have described the position as "ministerial," consisting generally of the power to sign documents on behalf of the company and occasionally take notes at board meetings. The Assistant Secretary is not a member of the Board of Directors of any of the companies, and receives no additional compensation for his position as assistant secretary.

The Ethics Commission has stated that if a public official is an officer of an organization, he has a fiduciary relationship with the organization, and would be prohibited, by R.C. 102.03 (D), from participating in matters that would affect the interests of the organization. See Advisory Op. No. 89-005. In addition, the Commission has stated that a public official cannot participate in matters in which her spouse has an interest. See Advisory Op. No. 92-012.

As an officer of LCIMS, Afford-A-Call, and Telecom, your spouse has a fiduciary interest in the corporations. Two of the corporations, Afford-A-Call and Telecom, are those whose interests may be directly before the OCC. Both of these companies would be directly affected by any decisions of the Consumers' Counsel involving the companies. Accordingly, your objectivity and independence of judgment with respect to the interests of these companies could be affected by your husband's fiduciary interest.

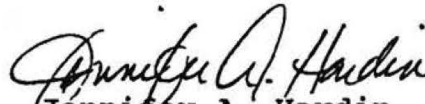
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Therefore, R.C. 102.03 (D) would prohibit you, if you hold the position of Consumers' Counsel, from participating in matters that would affect the interests of Afford-A-Call and Telecom, so long as your spouse has a fiduciary relationship with Afford-A-Call, Telecom, and LCIMS. R.C. 102.03 (D) would also prohibit you, if you hold the position of Consumers' Counsel, from supervising other OCC employees in matters affecting the interests of these companies. Of course, as a current employee of the OCC, you are also subject to these restrictions.

This informal advisory opinion was approved by the Ethics Commission at its meeting on December 3, 1993. The opinion is based on the facts presented and is limited 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 have any questions, please do not hesitate to contact this Office again.

Sincerely,


Jennifer A. Hardin
Staff Attorney