

OHIO ETHICS COMMISSION

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June 23, 2000

Informal Opinion 2000-INF-0623-2

Sheilah McAdams
Director of Law

Dear Ms. McAdams:

In a letter received by the Ohio Ethics Commission on January 3, 2000, you ask several questions regarding the application of the Ethics Law and related statutes to matters involving four members of the Maumee City Council (city council), which you identify as Council Members A through D. These questions pertain to contract negotiations between the city and the Maumee Board of Education (school board) involving the construction of an auditorium/natatorium complex at the Maumee High School.

Opinion Summary

As explained more fully herein, R.C. 2921.42(A)(1) and R.C. 102.03(D) prohibit Council Member A, whose father is a principal of an architecture firm, from participating in any aspect of city council's decision-making process with respect to the proposed construction project, if the architecture firm receives compensation for performing work related to any aspect of the project. In addition, Council Member A, who is employed by an architecture firm, is also prohibited from participating in any aspect of city council's decision-making process with respect to the proposed construction project, if the architecture firm by which he is employed receives compensation for performing work related to any aspect of the project and if he has an interest in the contracts of the architecture firm. Circumstances under which Council Member A would have an interest in the contracts of the architecture firm are described in this opinion.

Next, R.C. 2921.42(A)(1) prohibits Council Member C, whose father is a member of the school board, from participating in any aspect of city council's decision-making process with respect to the proposed construction project. R.C. 102.03(D) prohibits Council Member B, who is employed by the school board, from participating in any aspect of city council's decision-making process with respect to the proposed construction project.

Finally, R.C. 102.03(A)(1) prohibits Council Member D, who was a member of the school board until the end of 1999, from representing, or acting in a representative capacity for any person, including the city, within one year of the date he or she left his or her position on the school board, on any matter in which the city council member personally participated as a

member of the school board through decision, approval, disapproval, recommendation, the rendering of advice, or other substantial exercise of administrative discretion. Based on the information that you have presented to the Commission, R.C. 102.03(A)(1) may severely restrict Council Member D's ability to participate in matters before city council involving joint recreational facilities until that one-year period has lapsed.

Facts

In your letter to the Commission, you state that you are the Law Director of the City of Maumee. You explain that last spring, the Superintendent of Schools requested that a joint session of city council and the school board be convened. At the joint session, the Superintendent presented a proposal that the city donate approximately six million dollars to the school district for the construction of an auditorium/natorium complex at the Maumee High School. Under the Superintendent's proposal, the facility would be owned and operated by the school district, with some additional continuing financial participation by the city. The facility would be used by the city for community recreation programs and by the high school for physical education and competitive sports.

You explain that negotiations on various counterproposals continued through the summer at a series of meetings attended by certain elected, as well as administrative, officials. You state that the last counterproposal by the city in September, 1999, involved the city's purchase of a parcel of land which is currently owned by the school district and leased to the city as an outdoor recreation complex. The purchase price of the land would have been used by the school board to fund the construction of the auditorium under the original proposal.

You state that the parties could not reach an agreement, but that negotiations may resume in 2000. You explain that, due to resignations, appointments, and the November elections, the composition of the school board has changed since the earlier negotiations on the proposal. Because of this change in composition of city council, questions have arisen concerning whether several members of the new council may have conflicts of interest in any renewed negotiations with the school board, due to their various connections to the school board.

In particular, you note that Council Member A is the brother-in-law of the Superintendent. The Superintendent presented the initial proposal to the city on behalf of the school board, and he was active in the previous negotiations on the subject of the prior proposal. You further state that he would be expected to play an active role in any negotiations on behalf of the school board in the future. In addition, you state that the architecture firm of which Council Member A is a member and Council Member A's father is a principal prepared the conceptual drawings for the school board's original proposal to the city. The architecture firm donated its services for the research, preparation, and materials utilized for the presentation of the proposal, and received no compensation from the school board or the city. Next, you note that Council Member B is a teacher who has been employed by the Maumee Board of Education at all times pertinent to the events described in your letter to the Commission. You state that Council Member C is the son of a member of the school board. Finally, you note that Council Member D is a former member of the school board whose term on the board expired at the end of 1999. Council Member D was sworn in as a member of city council on January 3, 2000. You

state that Council Member D was a member of the school board during the previous negotiations on the subject of the joint recreational facility and the potential purchase of land from the school board.

Based on the various relationships described above, you ask whether the Ohio Ethics Law and related statutes prohibit any of the four council members from voting or otherwise participating in the following matters: (1) the school board's proposal for a joint recreation facility; (2) the city's counterproposal for the purchase of the land owned by the school district; and (3) any new proposals made between the parties for joint recreation facilities.

Authorizing or Securing Authorization of a Public Contract—R.C. 2921.42(A)(1)

Your questions implicate several provisions of the Ohio Ethics Law and related statutes. In particular, your questions implicate R.C. 2921.42(A)(1) which provides that no public official shall knowingly:

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.

The term "public official" is defined for purposes of R.C. 2921.42 in R.C. 2921.01(A) to include an elected or appointed officer or employee of any political subdivision. A member of city council is therefore a "public official" for purposes of R.C. 2921.42 and subject to its prohibitions. See Ohio Ethics Commission Advisory Opinions No. 80-001, 89-008, 91-002, and 92-012.

The term "public contract" is defined in R.C. 2921.42(G)(1) 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, or a contract for the design, construction, alteration, repair, or maintenance of any public property. Therefore, the city's acquisition of property or services from the school district would be a public contract for purposes of R.C. 2921.42(A)(1). Likewise, any contract for the design, construction, alteration, repair, or maintenance of property of the school district would also be a public contract for purposes of R.C. 2921.42(A)(1). For reference purposes, both of these types of contracts are referred to in this opinion as "school contracts."

The Commission has defined "member of his family," for purposes of R.C. 2921.42(A)(1), to include a spouse, children, whether dependent or not, parents, grandparents, grandchildren, siblings, or other persons related by blood or marriage and residing in the same household. See Adv. Ops. No. 80-001 and 90-010.

The Commission has defined "business associates" for purposes of R.C. 2921.42(A)(1), as parties who are acting together for a common business purpose. See Adv. Ops. No. 85-004 and 86-002. For example, the Ethics Commission has stated that: (1) a private employer is the business associate of his employee (see, e.g., Adv. Ops. No. 78-006, 81-001, and 89-008); (2) a

firm is the business associate of its representative or agents (Adv. Op. No. 84-013); and (3) business partners are business associates (Adv. Op. No. 85-004).

The Commission has determined that a public official will be deemed to have "authorized" a public contract, for purposes of R.C. 2921.42, where the contract could not have been awarded without the approval of the public official or the public position that the official holds. See Adv. Ops. No. 87-004, 88-008, 90-010, and 92-012. Accordingly, R.C. 2921.42(A)(1) prohibits a public official from discussing, making recommendations, or otherwise taking any formal or informal action on any part of his public agency's decision-making process with respect to the continuation, implementation, or terms and conditions of a contract in which he, a member of his family, or his business associate has an interest. See Adv. Ops. No. 89-005, 90-010, 92-012, and 97-004. Further, the Commission has determined that R.C. 2921.42(A)(1) prohibits a public official from using "the authority or influence of his office" by exercising the power and influence inherent in the position and prestige of his public office or employment, either formally or informally, to affect the decision-making process of other public officials or employees regarding the continuation, implementation, or terms and conditions of a contract in which his family member has an interest even if the official abstains from participating in official proceedings. See Adv. Ops. No. 90-012 and 97-004.

Application of R.C. 2921.42(A)(1) to Council Member A

In your letter, you state that Council Member A is the brother-in-law of the Superintendent. You also state that the Superintendent presented the initial proposal to the city on behalf of the school board, and was active in the previous negotiations on the proposed construction.

The initial question that must be addressed is whether the Superintendent would have an interest in a school district contract by virtue of his involvement in negotiations pertaining to the contract. The Commission has stated that an employee has an interest in his employer's contracts, for purposes of R.C. 2921.42, where any of the following circumstances apply: (1) the employee has an ownership interest in, or is a director, trustee, or officer of, his employer; (2) he takes part in contract negotiations; (3) his salary is based on the proceeds of the contract; (4) he receives a share of the contract's proceeds in the form of a commission or fee; (5) his responsibilities as an employee include participation in the administration or execution of the contract or he serves in a management position with the responsibility to oversee execution or administration of the contract; (6) the establishment or operation of his employing agency is dependent upon receipt of the contract; or (7) his tenure is dependent upon his employer receiving the award of the contract. See Adv. Ops. No. 89-006, 89-008, and 89-011. See also Adv. Ops. No. 78-006, 81-008, 82-003, and 86-005. Therefore, the Superintendent would have an interest in his employer's contract involving the proposed construction if he is involved in the contract negotiations.

The next question that must be addressed is whether Council Member A's brother-in-law is considered a member of the council member's family, for purposes of R.C. 2921.42, such that Council Member A would be prohibited from participating in city council's decision-making

process with respect to a public contract in which his brother-in-law (the Superintendent) would have an interest. As stated above, the Commission has not, in past advisory opinions, extended the definition of "member of his family" to include an in-law of the public official unless the in-law resides in the same household as the public official. A public official's brother-in-law who does not reside with the public official is not within the definition of a "member of his family" for purposes of the prohibition of R.C. 2921.42(A)(1) in the determination of the Ethics Commission. Therefore, R.C. 2921.42(A)(1) does not prohibit Council Member A, based on his relationship to the Superintendent, from participating in city council's decision-making process with respect to the proposed construction. The question remains, however, whether Council Member A's relationship, or his father's relationship, to the architecture firm that prepared designs for the school district, would be of such a nature that it would prohibit Council Member A from participating in city council's decision-making process with respect to the proposed construction.

The key question with respect to Council Member A's, or his father's, relationship to the architecture firm is whether the architecture firm would receive any financial or pecuniary benefit from the work that it would perform for the school district involving the school board's proposal for a joint recreation facility, or any related matter involving the city's acquisition of property or services from the school district. If the architecture firm would not receive such a pecuniary benefit, then R.C. 2921.42(A)(1) would not prohibit Council Member A from participating in city council's decision-making process with respect to the proposed construction. If, however, the architecture firm would receive any pecuniary benefit from a contract involving the work that it would perform for the school district involving the school board's proposal for a joint recreation facility, or any related matter involving the city's acquisition of property or services from the school district, then Council Member A would be prohibited from participating in city council's decision-making process with respect to the school contract if the city council member, or his father, also has an interest in the school contract.

Council Member A may have an interest in the contracts of the architecture firm. As an employee of the firm, he has an interest in the contracts of the firm if his situation falls under any one of the seven circumstances discussed above. If Council Member A has an interest in the contracts of the architecture firm, then R.C. 2921.42(A)(1) would prohibit him from participating in city council's decision-making process with respect to those contracts in which he would have an interest. In addition, if the architecture firm receives compensation from any school contracts, and Council Member A has an interest in the architecture firm's contracts, then you should contact this office for information concerning the application of R.C. 2921.42(A)(3), 2921.42(A)(4), and 2921.42(C) to the council member's situation.

As stated above, Council Member A's father is a principal in the architecture firm. As a principal in the architecture firm, he would have an ownership interest in the firm. Therefore, he would have an interest in the contracts of the firm. See Adv. Ops. No. 78-006, 81-008, 85-002, and 92-006. R.C. 2921.42(A)(1) prohibits Council Member A from using his position to secure authorization of a contract in which a member of his family has an interest. For purposes of the prohibition of R.C. 2921.42(A)(1), a family member includes a father of the public official. See Adv. Ops. No. 80-001 and 90-005. Therefore, regardless of whether Council Member A would have an interest in the architecture firm's contracts, R.C. 2921.42(A)(1) would prohibit Council

Member A from participating in city council's decision-making process with respect to contracts involving the proposed construction project in which his father would have an interest.

Therefore, Council Member A is prohibited by R.C. 2921.42(A)(1) from voting, discussing, deliberating, formally or informally lobbying, or taking any other action, as a member of city council, to secure a school contract under which the architecture firm would receive compensation. See Adv. Ops. No. 79-005 and 90-003. For example, City Council Member A would be prohibited from voting to approve payments under contracts that had been entered into by the architecture firm and the city, from recommending the architecture firm to other city officials or employees, and from using his position of authority over other city officials or employees, in any other way, to secure business for the architecture firm.

Application of R.C. 2921.42(A)(1) to Council Member B

You state that Council Member B is a teacher who is employed by the school board. The question is whether R.C. 2921.42(A)(1) would prohibit Council Member B from participating in city council's decision-making process with respect to school contracts by virtue of the council member's employment by the school board.

R.C. 2921.42(A)(1) prohibits a public official from using the authority or influence of his office to secure authorization of a public contract in which his business associate has an interest. As explained above, the Commission has stated that a public official's private employer is his business associate for purposes of R.C. 2921.42(A)(1). The Commission has also stated that the operation of a school district, or any other public entity, is not the operation of a business as that term is defined. See Adv. Op. No. 93-003. Therefore, a public official's public employer is not his business associate for purposes of R.C. 2921.42(A)(1). However, while R.C. 2921.42(A)(1) does not prohibit Council Member B from participating in city council's decision-making process with respect to school contracts by virtue of his or her employment by the school board, R.C. 102.03(D), as discussed below, does restrict the council member's ability to participate in matters affecting the school district.

Application of R.C. 2921.42(A)(1) to Council Member C

You state that Council Member C is the son of a member of the school board. R.C. 2921.42(A)(1) prohibits a public official from authorizing a public contract in which a family member has an interest. The question here is whether a school board member has an interest in the contracts of his or her school board, such that R.C. 2921.42(A)(1) would prohibit Council Member C from participating in city council's decision-making process with respect to the school contracts. See Adv. Ops. No. 80-001 and 90-005 (a parent is a family member for purposes of R.C. 2921.42(A)(1)).

For purposes of the prohibition of R.C. 2921.42(A)(1), the Commission has stated that an interest may be either pecuniary or fiduciary in nature. See Adv. Ops. No. 81-008 and 89-006. The question, then, is whether a member of a board of education has a fiduciary interest in the contracts of his or her board. In addressing this question, the Commission stated the following in Advisory Opinion No. 99-004:

Members of a board of education are elected to offices of the school district and are required to take an oath to support the Constitutions of the United States and State of Ohio. R.C. 3313.09 and 3313.10. Further, a board of education is a body politic and corporate, capable of suing and being sued, contracting and being contracted with, and acquiring, holding, possessing, and disposing of real and personal property. R.C. 3313.17. R.C. 3313.47 states that the management and control of all public schools that it operates within its district resides with each city, exempted village, or local board of education.

...
Based on these statutory provisions, it is clear that a member of a school district board of education is a person to whom power is entrusted for the benefit of the citizens in the school district, and who has a relationship with the district that is based on trust and confidence. Accordingly, the Commission concludes that members of a school district board of education have a fiduciary relationship with the school district, and would have a fiduciary interest in contracts of the district.

Based on Council Member C's father's fiduciary interest in the contracts of the school district, R.C. 2921.42(A)(1) prohibits Council Member C from participating in city council's decision-making process with respect to contracts involving the school district. R.C. 2921.42(A)(1) prohibits Council Member C from voting, discussing, deliberating, formally or informally lobbying, or taking any other action, as a member of city council, to secure a school contract. See Adv. Ops. No. 79-005 and 90-003.

Using Public Position to Secure Something of Value—R.C. 102.03(D)

Your questions also implicate R.C. 102.03(D), which provides the following:

No public official or employee shall use or authorize the use of the authority or influence of 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 the public official or employee with respect to that person's duties.

A "public official or employee" is defined, for purposes of R.C. 102.03, to include any person who is elected or appointed to an office or is an employee of any public agency. R.C. 102.01(B). A member of city council falls within the definition of "public official or employee" for purposes of R.C. 102.03 and is subject to the prohibition imposed by Division (D). R.C. 102.01(B) and (C). See generally Adv. Ops. No. 88-004, 89-008, and 98-002.

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 and direct, pecuniary benefit to the financial interests of an individual, business, or entity, either private or public, is considered to be a thing of value under R.C. 102.03(D). See Adv. Ops. No. 88-004, 88-005, and 89-008. See also Adv. Ops. No. 79-008, 85-006, 85-011, and 86-007.

R.C. 102.03(D) does not speak in terms of a public official's or employee's "interest" but rather prohibits a public official or employee from taking any action, formally or informally, to secure a thing of value if the thing of value could manifest a substantial and improper influence upon the public official or employee with respect to that person's duties. See Adv. Ops. No. 88-004 and 91-004. The Ethics Commission has held that a determination of whether a thing of value could manifest a substantial and improper influence upon a public official or employee with respect to that person's duties is dependent upon the facts and circumstances of each individual situation. See Adv. Ops. No. 87-008, 88-004, and 91-004.

Application of R.C. 102.03(D) to Council Member A

A matter that affects the personal financial interests of a public official or employee would generally be of such a character as to manifest an improper influence upon him with respect to his duties. See Adv. Ops. No. 88-004 and 90-003. However, in order for R.C. 102.03(D) to prohibit a public official or employee from participating in a matter, which would secure a thing of value for himself, the thing of value must also be of a "substantial" nature. See Adv. Ops. No. 86-011 and 92-014. The word "substantial" means "of or having substance, real, actual, true; not imaginary; of considerable worth or value; important." Adv. Op. No. 89-014 (quoting Adv. Ops. No. 75-014 and 76-005). In Council Member A's situation, any pecuniary benefits that would accrue as a result of his interest in the contracts of the architecture firm would be substantial.

The Commission has also stated that a matter that affects the personal financial interests of a family member of a public official or employee would generally be of such a character as to manifest an improper influence upon him with respect to his duties. See Adv. Ops. No. 89-008, 90-004, 91-004, and 92-012. In the present situation, Council Member A's father is a principal of the architecture firm. Any pecuniary benefits that would accrue as a result of Council Member A's father's interest in the contracts of the architecture firm would be substantial.

Therefore, R.C. 102.03(D) prohibits Council Member A from using his position on city council to secure a public contract from which either he or his father would receive a definite and direct pecuniary benefit. In other words, Council Member A would be prohibited from: (a) using public time, facilities, personnel, or resources to perform work for the architecture firm; (b) using his relationship with other public officials and employees to secure a favorable decision or action by the other officials or employees regarding the architecture firm; (c) discussing, deliberating, or taking any action, as a member of city council, on any matter involving the architecture firm; and (d) using his public position or authority in any other way to secure a benefit for the architecture firm. See Adv. Op. No. 96-004.

Application of R.C. 102.03(D) to Council Member B

As stated above, Council Member B is a teacher who is employed by the school board. The Commission has stated that R.C. 102.03(D) generally prohibits a public official from participating in any matters that would directly affect his outside employer's interests. See, e.g., Adv. Op. No. 88-005. In Advisory Opinion No. 89-008, the Commission further explained this prohibition as follows:

An employer holds a position of power and authority over the hiring, compensation, discipline, and termination of its employees. A city council member who is in the position of making an official decision regarding the pecuniary interests of his private employer would have an inherent conflict of interest impairing the council member's objectivity and independence of judgment.

The Ethics Commission has never drawn a distinction between private and public outside employers for purposes of the prohibitions of R.C. 102.03(D). See Adv. Ops. No. 77-006, 82-002, 89-006, and 89-010. A public employer would have the same position of power and authority over an employee as a private employer. Therefore, the fact that a public, rather than a private, employer is involved does not affect the applicability of R.C. 102.03(D). See Adv. Op. No. 91-006 (R.C. 102.03(D) prohibits a member of city council, who is employed by a local school district which includes the city, from voting, discussing, participating in deliberations, or otherwise using his official position as a council member with regard to city council's grant of a tax abatement to a business located within the school district).¹ Council Member B is prohibited from using his or her position to secure a pecuniary benefit for his or her public outside employer. In particular, Council Member B is prohibited from: (a) using his or her relationship with other public officials and employees to secure a favorable decision or action by the other officials or employees regarding the school district; (b) discussing, deliberating, or taking any action, as a member of city council, on any matter involving the school district; and (c) using his or her public position or authority in any other way to secure a benefit for the school district. See Adv. Op. No. 96-004.

The Revolving Door Prohibition As Applied to Council Member D—R.C. 102.03(A)(1)

The situation that you have described with respect to Council Member D implicates Division (A) of Section 102.03 of the Revised Code, the "Revolving Door" prohibition of the Ohio Ethics Law, which imposes restrictions upon the ability of former public officials and employees to represent a client or act in a representative capacity for any person after leaving public service. R.C. 102.03(A)(1) provides:

No present or former public official or employee shall, during public employment or service or for twelve months thereafter, represent a client or act in a representative capacity for any person on any matter in which the public official or employee personally participated as a public official or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion.

¹ Even though the school employee in Advisory Opinion No. 91-006 was an administrator, the application of R.C. 102.03(D) is not affected by the nature of the public outside employment. The position that subjected the public official to R.C. Chapter 102. in Advisory Opinion No. 91-006 was his position on city council. Likewise, the public official in question here is a member of city council who is subject to R.C. Chapter 102. Therefore, even if, as a school teacher, he would not be considered a public employee because he does not perform, or have the authority to perform, administrative or supervisory duties, he is subject to R.C. 102.03(D) when he is acting as a council member.

The pertinent elements of this provision are: (1) a present or former public official or employee; (2) is prohibited from representing a client or acting in a representative capacity for any person; (3) before any public agency; (4) on any matter in which he personally participated as a public official or employee; (5) during government service and for one year thereafter. See Adv. Ops. No. 86-001, 89-009, 91-009, and 92-005. See also State v. Nipps, 66 Ohio App. 2d 17, 22-23 (1979), in which the Franklin County Court of Appeals upheld the "Revolving Door" prohibition as constitutional.

You stated that Council Member D left his position on the school board in December, 1999. A member of a school district board of education is a "public official or employee" for purposes of R.C. 102.03(D). See Adv. Ops. No. 90-003 and 93-014. Therefore, Council Member D is a "former public official or employee" for purposes of R.C. 102.03, and, as such, the council member is subject to the statutory prohibitions in R.C. 102.03(A). See generally Adv. Op. No. 97-001. Accordingly, R.C. 102.03(A) will prohibit Council Member D, for a period of one year from the date he or she left his or her position with the school board, from representing the City, or any other party, before any public agency, including the school board, on any matter in which the council member personally participated while he or she was a member of the school board. See Adv. Ops. No. 91-009 and 92-005.

The term "represent" is defined in R.C. 102.03(A)(5) to include "any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person." Examples of the types of activities that would fall within the definition of the term "represent," for purposes of this section, were described by the Ethics Commission in Advisory Opinion No. 86-001:

[T]his would include activities ranging from an appearance on behalf of a private client in a formal proceeding or meeting to informal "lobbying" of agency personnel by telephone or in person. It also includes written communications ranging from formal documents and filings to informal letters and notes. Even if the attorney or consultant does not sign the documents, letters, or notes, the prohibition would apply if she prepared the communication. If she merely consulted with the attorneys or other personnel who prepared the documents, letters, or notes, the prohibition would not apply.

R.C. 102.03(A) prohibits a former public official or employee from "representing" a client, new employer, or any other party, on a matter in which he personally participated, before any public agency, and not just before the agency with which he was previously employed. See Adv. Ops. No. 86-001, 87-001, and 92-005.

A "person," for purposes of R.C. 102.03(A)(1), has been interpreted by the Commission to include governmental agencies, individuals, corporations, business trusts, estates, trusts, partnerships, and associations. See R.C. 1.59(C) and Adv. Ops. No. 82-002 and 89-003. In your situation, this would include the city and any other person.

The prohibition in R.C. 102.03(A) applies to any "matter" in which the official or employee personally participated. The term "matter" is defined, for purposes of R.C.

102.03(A)(1) and (3), to include "any case, proceeding, application, determination, issue, or question, but does not include the proposal, consideration, or enactment of statutes, rules, ordinances, resolutions, or charter or constitutional amendments." R.C. 102.03(A)(5). The term "matter" is broadly defined under R.C. 102.03(A) and includes any issue or question, as well as particular cases, proceedings, applications, and determinations. See Adv. Ops. No. 91-009 and 92-005. In Advisory Opinion No. 99-001, the Ethics Commission further defined "matter" as follows:

"Matter" includes such concrete items as a specific occurrence or problem requiring discussion, decision, research, or investigation, a lawsuit or legal proceedings, an oral or written application, and a settlement of a dispute or question. "Matter" also includes such abstract items as a dispute of special or public importance and a controversy submitted for consideration. It is also apparent, however, that the term "matter" cannot be interpreted so broadly as to include a general subject matter.

In Council Member D's situation, "matter" would include negotiations and other issues concerning the joint recreational facility and the potential purchase of land from the school board.

R.C. 102.03(A) defines "personal participation" to include "decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion." In Advisory Opinion No. 91-009, the Ethics Commission held that "personal participation" in a matter also includes the exercise of "supervision or general oversight" over other personnel in their work on that matter, since supervision of a public official's or employee's activities involves decision-making, approval or disapproval, recommendation or advice, and other exercises of administrative discretion, by the supervisor, regarding that matter. See also Adv. Op. No. 92-005.

If Council Member D provided a recommendation, rendered advice, or otherwise exercised substantial administrative discretion on issues concerning the joint recreational facility and the potential purchase of land from the school board, then R.C. 102.03(A) prohibits Council Member D from representing, or acting in a representative capacity for any person, including the city, on these matters within one year of the date that he left his position on the school board. R.C. 102.03(A) may severely restrict Council Member D's ability to participate in matters before city council involving joint recreational facilities until one year from the date he left his position on the school board.

Conclusion

As explained above, R.C. 2921.42(A)(1) and R.C. 102.03(D) prohibit Council Member A, whose father is a principal of an architecture firm, from participating in any aspect of city council's decision-making process with respect to the proposed construction project if the architecture firm receives compensation for performing work related to any aspect of the project. In addition, R.C. 2921.42(A)(1) and R.C. 102.03(D) also prohibit Council Member A, who is employed by an architecture firm, from participating in any aspect of city council's decision-making process with respect to the proposed construction project if the architecture firm

Sheila McAdams

June 23, 2000

Page 12

by which he is employed receives compensation for performing work related to any aspect of the project and if he has an interest in the contracts of the architecture firm. Circumstances under which Council Member A would have an interest in the contracts of the architecture firm are described in this opinion.

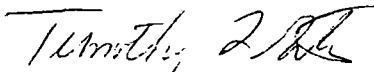
Next, R.C. 2921.42(A)(1) prohibits Council Member C, whose father is a member of the school board, from participating in any aspect of city council's decision-making process with respect to the proposed construction project. R.C. 102.03(D) prohibits Council Member B, who is employed by the school board, from participating in any aspect of city council's decision-making process with respect to the proposed construction project.

Finally, R.C. 102.03(A)(1) prohibits City Council Member D, who was a member of the school board until the end of 1999, from representing, or acting in a representative capacity for any person, including the city, within one year of the date he or she left his or her position on the school board, on any matter in which the city council member personally participated as a member of the school board through decision, approval, disapproval, recommendation, the rendering of advice, or other substantial exercise of administrative discretion. Based on the information that you have presented to the Commission, R.C. 102.03(A)(1) may severely restrict Council Member D's ability to participate in matters before city council involving joint recreational facilities until that one-year period has lapsed.

Due to the number of Maumee council members with potential conflicts of interest in matters before city council involving the school district, you may wish to review the discussion in Gitlin v. Berea, 8th Dist. Ct. Appeals No. 58062 (1990). In Gitlin, the Court considered the treatment of a disqualification as a vacancy on a legislative body for purposes of determining the number of members of the legislative body that must be present to constitute a quorum. This opinion may be of some general assistance to you as the city proceeds with this matter.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on June 23, 2000. The opinion is based on the facts presented and is limited to questions arising under Chapter 102. and Sections 2921.42, 2921.421, and 2921.43 of the Revised Code and does not purport to interpret other laws or rules. If you have any questions or desire additional information, please contact this Office again.

Very Truly Yours,



Timothy L. Gates
Staff Attorney