

# OHIO ETHICS COMMISSION

Sarah M. Brown, *Chairman*  
Robert Browning, *Vice Chairman*



8 East Long Street, 10<sup>th</sup> Floor  
Columbus, Ohio 43215  
Telephone: (614) 466-7090  
Fax: (614) 466-8368  
Web site: [www.ethics.ohio.gov](http://www.ethics.ohio.gov)

David E. Freel, *Executive Director*

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October 30, 2006

Informal Opinion 2006-INF-1030

The Honorable Tina Skeldon Wozniak  
Lucas County Commissioner

Dear Ms. Wozniak:

On July 31, 2006, the Ohio Ethics Commission received your letter requesting an advisory opinion. In your letter, you have asked whether the Ethics Law and related statutes prohibit you, as a county commissioner, from participating in matters that affect individuals who are clients of your husband's business.

### **Brief Answer**

As explained more fully below, the Ethics Law does not generally prohibit you from participating in a matter that affects a client of your husband's business unless: (1) the matter would have a definite and direct affect on your husband or his business; (2) an officer or employee of your husband's business is representing the customer before the board of county commissioners on the matter; (3) an officer or employee of the business is providing any services to the client on the matter; or (4) the relationship between you and the client is otherwise such that your objectivity or independence of judgment could be impaired with regard to the matter.

You have asked for guidance in four numbered situations. In specific response to your questions, the Ethics Law does not prohibit you from participating in a contractual or economic development matter before the county commissioners that affects:

- (1) A current client of your husband or his business, unless he or the business would have an interest in the matter in any of the ways described;

- (2) A former client of your husband or his business, as long as there is no ongoing relationship and neither your husband nor his business has an interest in the matter in any of the ways described;
- (3) A business or individual who may, at some time in the future, become a client of your husband or his company, unless he or the company has a definite and direct interest in the matter, in any of the ways described, at the time it is pending before the commissioners; and
- (4) An independent contract affiliated with your husband's business, unless your husband or his business has an interest in the matter in any of the ways described.

### **Facts**

In your advisory opinion request, you explained that you are the President of the Board of Lucas County Commissioners. You explained that you have no outside business or employment interests.

You stated that your husband and his partner own a RE/MAX franchise, which is an active residential real estate business in Lucas County. You further stated that your husband had this business before you became a county commissioner. You play no role in your husband's business.

You stated that your husband's business does not do business with Lucas County. You also state that your husband would never serve as the agent for property involved in any type of transaction with the county. You indicated that your husband would decline any business where a particular development project was seeking economic development aid from the county.

You requested an advisory opinion from the Ohio Ethics Commission addressing the restrictions that you face when dealing with matters before the county commissioners that may have a direct or indirect impact on the interests of clients of your husband's business and may have an impact on the interests of your husband's business.

### **Participating in Matters Affecting a Family Member—R.C. 102.03(D) and (E)**

The conflict of interest restrictions, set forth in R.C. 102.03(D) and (E), are applicable to the situation you have described and provide:

- (D) 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.

- (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 the public official or employee with respect to that person's duties.

As a county commissioner, you are subject to the prohibitions imposed by R.C. 102.03(D) and (E). See R.C. 102.01(B) and (C); Adv. Op. No. 99-002.

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). Any profits or financial benefits that your husband or his business would receive would be within the definition of "anything of value."

R.C. 102.03(D) and (E) prohibit a public official from using the public position to secure, and from soliciting, a thing of value that would manifest a substantial and improper influence upon the public official with respect to the public official's duties. The Ethics Commission has stated that R.C. 102.03(D) and (E) prohibit a public official from securing and soliciting things of value for individuals with whom the individual has a close business, family, or economic relationship. Ohio Ethics Commission Advisory Opinion No. 97-002. In particular, the Ethics Commission has stated that R.C. 102.03(D) and (E) prohibit a public official from securing and soliciting things of value for his or her spouse. Adv. Op. No. 92-010.

Therefore, R.C. 102.03(D) and (E) prohibit you from authorizing, approving, voting upon, discussing, deliberating, recommending, or otherwise using the authority or influence inherent in your position as a county commissioner on any matters that have a definite and direct impact on your husband or his business. You would also be prohibited from participating in a matter before the county commissioners that affects one of your husband's clients if you have a relationship with the client where your objectivity or independence would be affected by that person's interest. The application of the Ethics Law is dependent on the facts and circumstances presented in each situation. Adv. Op. No. 2003-02.

The Commission has explained that a business would receive a definite and direct thing of value from a matter before a public agency if the matter would have a definite and direct financial impact on the business. Adv. Op. No. 86-007. For example, if a business is applying for a zoning variance in order to develop a particular piece of property, the public agency's decision on the application would have a definite and direct interest on the business. Adv. Op. No. 88-005. Where a matter before the public agency involves a client of the business, the business would receive a thing of value from consideration of the matter if: (1) an officer or employee of the business is representing the client before the agency on the matter; or (2) an officer or employee of the business has provided any services to the client on the matter. Adv. Op. No. 90-008.

You asked whether the Ethics Law prohibits you from participating in matters involving a past or present client of your husband's business which is seeking to do business with the county or is seeking an economic development incentive from the county where your husband's business is not working with the client on the particular matter involving the county funding or project. The Ethics Law does not prohibit you from participating in matters involving current or past clients of your husband or his business unless your husband or his business would receive a definite and direct thing of value from the county's consideration of the matter which is before the county commissioners, in any of the ways described. Adv. Op. No. 90-004. Further, in the case of past clients, as long as the client relationship has been completed severed, and there is no ongoing or anticipated business relationship, it would be unlikely that your husband's company would receive a benefit because of any of the kinds of situations described above. Adv. Op. No. 90-011.

You also asked about the restrictions imposed by the Ethics Law to a situation where a business or individual has received some economic benefit from the county in the past and then later becomes a client of your husband's business. In these circumstances, the Ethics Law would prohibit you from participating in the matter before the county if, at the time the matter is pending before the county, your husband or his business has a definite and direct interest in the matter. For instance, you would be prohibited from acting on a matter that affects any individual or company if your husband's business has any kind of business arrangement with the individual or company that is contingent upon the county's decision-making.

Finally, you asked about the restrictions imposed by the Ethics Law in various circumstances involving independent contractors affiliated with your husband's business. You indicated that the independent contractor may have a tenant and service fee relationship with your husband's business, or may have a more direct relationship that includes some manner of fee sharing with the partnership.

The Ethics Law prohibits you from participating in any contractual, regulatory, or other decisions before the county involving these independent contractors if your husband or his business would have a definite and direct interest in those matters. If your husband's business does not have a definite and direct interest, the Ethics Law does not prohibit you from participating in matters that affect independent contractors working with his business. However, to assure that the county's decision-making process is unaffected by any outside interests, it is your responsibility to determine the nature of any relationships between independent contractors and your husband's company and to make appropriate decisions about when to remove yourself from matters before the commissioners that affect the contractors.

**Public Contract Prohibitions—R.C. 2921.42(A)(1)**

You should also be aware of the restriction imposed by 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.

As a county commissioner, you are a "public official" subject to the prohibitions of R.C. 2921.42. See R.C. 2921.01(A); Adv. Op. No. 99-002. The term "public contract" is defined in R.C. 2921.42(G)(1)(a) 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 the state or a political subdivision of the state. In particular, the Commission has stated that a grant or loan by a political subdivision for economic development or other purposes is a public contract. See Adv. Ops. No. 85-002 and 95-007. The Commission has reasoned that the political subdivision is acquiring property development services through the issuance of the grant or loan.

The Ethics Commission has defined "family member" to include, regardless of where they reside, a spouse, children, whether dependent or not, grandchildren, parents, grandparents, and siblings. See Adv. Ops. No. 80-001, 89-005, and 90-010. Also included are other persons related to the official by blood or marriage and residing in the same household with the official. Id. Therefore, for purposes of the prohibition of R.C. 2921.42(A)(1), your husband is your "family member."

R.C. 2921.42(A)(1) prohibits you from participating in the authorization of any public contract in which your husband has an interest. For instance, if the county is purchasing or acquiring property or services from a client of your husband's business, through a grant, loan, direct purchase, or otherwise, and your husband's business would have a definite and direct interest in the contract, R.C. 2921.42(A)(1) prohibits you from participating in the acquisition matter. You are prohibited from voting, discussion, deliberation, or formal or informal lobbying on the matter. The law would not, however, prohibit the county from purchasing property from an individual even though he or she is a client of your husband's business.

### **Conclusion**

As explained above, the Ethics Law does not generally prohibit you from participating in a matter that affects a client of your husband's business unless: (1) the matter would have a definite and direct affect on your husband or his business; (2) an officer or employee of your husband's business is representing the customer before the board of county commissioners on the matter; (3) an officer or employee of the business is providing any services to the client on the matter; or (4) the relationship between you and the client is otherwise such that your objectivity or independence of judgment could be impaired with regard to the matter.

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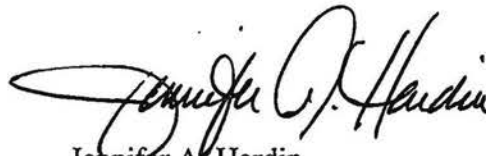


- (1) A current client of your husband or his business, unless he or the business would have an interest in the matter in any of the ways described;
- (2) A former client of your husband or his business, as long as there is no ongoing relationship and neither your husband nor his business has an interest in the matter in any of the ways described;
- (3) A business or individual who may, at some time in the future, become a client of your husband or his company, unless he or the company has a definite and direct interest in the matter, in any of the ways described, at the time it is pending before the commissioners; and
- (4) An independent contract affiliated with your husband's business, unless your husband or his business has an interest in the matter in any of the ways described.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on October 27, 2006. The Commission commends you for requesting guidance before taking any actions that could be prohibited by law.

The opinion is based on the facts presented. It 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 or desire additional information, please feel free to contact this Office again.

Sincerely,



Jennifer A. Hardin  
Chief Advisory Attorney