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INFORMATION SHEET: ADVISORY OPINION NO. 2011-03
REVOLVING DOOR—FORMER DEPUTY TREASURER OF STATE

What is the question addressed in the opinion?

What are the limits in the revolving door law as they apply to the former Deputy Treasurer of State who is now employed by a bank?

What is the answer in the opinion?

During the first year after leaving the Treasurer of State's Office, the Ethics Law and related statutes prohibit the former Deputy Treasurer from:

- Representing the bank, or its customers or employees, before any public agency on any matter in which he personally participated during his employment at the Treasurer of State's Office; and
- Profiting from any unbid contracts that he authorized or participated in authorizing during his employment at the Treasurer of State's Office.

What prompted this opinion?

The opinion was prompted by a request for advice from the subject.

When did the conclusions in this opinion become effective?

The opinion became effective when it was rendered by the Commission at its meeting on March 24, 2011.

For More Information, Please Contact:

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ADVISORY OPINION NO. 2011-03 IS ATTACHED.**

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Advisory Opinion
Number 2011-03
March 24, 2011
**Revolving Door—Former
Deputy Treasurer of State**

Syllabus by the Commission:

- (1) Division (A)(1) of Section 102.03 of the Revised Code prohibits the former Deputy Treasurer of the State of Ohio from representing his new employer, a bank, or its customers or employees, before any public agency on any matter in which he personally participated during his employment at the Treasurer's Office;
- (2) Division (A)(3) of Section 2921.42 of the Revised Code prohibits the former Deputy Treasurer of the State of Ohio from profiting from any unbid contracts that he authorized or participated in authorizing during his employment at the Treasurer's Office.

* * *

The Commission has been asked about the revolving door limits that apply to the former Deputy Treasurer for the State of Ohio who is now employed by a bank.

Brief Answer

As explained below, during the first year after leaving the Treasurer of State's Office (Treasurer's Office), the Ethics Law and related statutes prohibit the former Deputy Treasurer from:

- Representing the bank, or its customers or employees, before any public agency on any matter in which he personally participated during his employment at the Treasurer's Office; and
- Profiting from any unbid contracts that he authorized or participated in authorizing during his employment at the Treasurer's Office.

Facts

The Deputy Treasurer served from February 2009 to December 17, 2010, and oversaw all operational functions of the Treasurer's Office and served as the State Treasurer's designee on the Board of Deposits, Petroleum Underground Storage Tank Release Compensation Board, and Ohio Public Facilities Commission. Prior to serving as Deputy Treasurer, he served as Chief Financial Officer for the Treasurer's Office from May 2008 to February 2009.

The former Deputy Treasurer is now employed by a national bank, where he serves as National Manager of Public Sector. In his role at the bank, the former Deputy Treasurer will lead the development and implementation of public sector strategy for all states in which the bank does business. He will also lead a team of professional relationship managers and sales associates whose primary client base will be governmental organizations, municipalities, and higher education institutions.

The bank has conveyed that it understands that the former Deputy Treasurer will be prohibited, for twelve months after leaving his position at the Treasurer's Office, from representing the bank before any public agency on any matter in which he personally participated while employed at the Treasurer's Office. The bank has also conveyed that it is committed to avoiding any appearance of impropriety. To that end, the bank has already decided it will reassign the individuals responsible for maintaining relationships with the Treasurer's Office so that they report to another bank manager at during the first year after the former Deputy Treasurer's public service. The former Deputy Treasurer will not interact with the Treasurer's Office or with the boards on which he served as the Treasurer's designate except in social settings.

Revolving Door Law—R.C. 102.03(A)(1)

The Deputy Treasurer of State is a "public official or employee" subject to R.C. 102.03(A)(1), the "Revolving Door" prohibition of the Ohio Ethics Law, which reads:

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.

R.C. 102.01(B) and (C). Ohio Ethics Commission Advisory Opinion No. 91-003.

R.C. 102.03(A)(1) protects the public interest by prohibiting situations from arising where a former public official or employee "will engage in a conflict of interest or realize personal gain at public expense from the use of 'inside' information." *State v. Nipps* (1979), 66 Ohio App.2d 17, 21. Referring to the revolving door law, the Court held: "The state has a

substantial and compelling interest to restrict unethical practices of its employees and public officials not only for the internal integrity of the administration of government, but also for the purpose of maintaining public confidence in state and local government.” Id.

R.C. 102.03(A)(1) prohibits a former public official from **representing** or acting in a representative capacity for any **person** on any **matter** in which the official **personally participated**. These terms—“represent,” “person,” “matter,” and “personal participation”—are defined in the Ohio Revised Code. Ohio Ethics Commission Advisory Opinions that have more fully explained these terms as applied to specific situations include Advisory Opinions No. 86-001, 87-001, and 92-005 (represent), 82-002 and 89-003 (person), 84-005, 99-001, and 2004-04 (matter), and 86-001 and 91-009 (personal participation). The terms are defined in this opinion as they are defined in the law and previous opinions.

Application of the Revolving Door Law to the Former Deputy Treasurer

As Deputy Treasurer, the subject of the request oversaw all operational functions of the Ohio Treasurer’s Office. Any decision, approval, disapproval, recommendation, advice, investigation, or other exercise of administrative discretion of the former Deputy Treasurer while overseeing the operational functions of the Ohio Treasurer’s Office falls within the definition of “personal participation.” For one year after leaving his public position, the former Deputy Treasurer is prohibited from representing anyone, including the bank, before any public agency, on any matter in which he personally participated during his service as deputy treasurer. The same restrictions apply to any matter in which the former Deputy Treasurer “personally participated” while he served as chief financial officer for the Treasurer’s Office or while serving as the Treasurer’s designee on a state board or commission.

R.C. 102.03(A)(1) prohibits the former Deputy Treasurer, for a period of one year from the date he left his public position, from representing the bank, its customers or employees, or any other person, before any public agency, on any matter in which he personally participated at any time during his public service. Adv. Ops. No. 89-003, 91-009, 92-005, and 99-001. This restriction includes any matter in which he personally participated in any public role during his employment at the Treasurer’s Office.

As the bank’s National Manager of Public Sector, the former Deputy Treasurer will lead the development and implementation of public sector strategy. R.C. 102.03(A)(1) does not prohibit the former Deputy Treasurer from serving in that role provided that he complies with the prohibition against representing the bank or any other person before public agencies. The former Deputy Treasurer will not be prohibited from:

- representing the bank on new matters or matters in which he **did not** personally participate while at Treasurer’s Office;
- providing background information to other bank officials or employees on matters in which he **did** personally participate.

Profiting from Public Contracts—R.C. 2921.42(A)(3)

The former Deputy Treasurer is also a public official subject to R.C. 2921.42(A)(3), which provides that no public official shall knowingly:

During his term of office or within one year thereafter, occupy any position of profit in the prosecution of a public contract authorized by him or by a legislative body, commission, or board of which he was a member at the time of authorization, unless the contract was let by competitive bidding to the lowest and best bidder.

The term “public contract” is defined, for purposes of R.C. 2921.42, as the purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of the state, any of its political subdivisions, or any agency or instrumentality of either. R.C. 2921.42(I)(1)(a). An investment, or a contract for investment consultant services, made on behalf of the State Treasurer’s Office is a “public contract” for purposes of R.C. 2921.42(A). Adv. Op. No. 93-001. See also Adv. Ops. No. 83-003, 85-007, and 92-008.

A public contract will be deemed to have been “authorized” by a public official if the contract could not have been awarded without the approval of the official, or the office or position in which the official serves. Adv. Ops. No. 88-008, 91-009, and 92-017.

The bank has business relationships with the State of Ohio including one active contract between the State and bank in which the former Deputy Treasurer was involved. The former Deputy Treasurer’s salary at the bank is not dependent on the contract and he will not be eligible for any bonuses or other compensation related to any state contracts issued prior to joining the bank. These factors would indicate that he does not profit from the contract in which he was involved during his state employment. Further, the contract was competitively bid. The restriction in R.C. 2921.42(A)(3) would not apply to the former Deputy Treasurer regarding any competitively bid contract awarded to the bank provided that it was the lowest and best bidder.

If the former Deputy Treasurer participated in the authorization of any contract to the bank that was not competitively bid and awarded to the lowest and best bidder, R.C. 2921.42(A)(3) would prohibit him from profiting from the contract in any of the ways described.

Time Limit on Prohibitions in R.C. 102.03(A)(1) and 2921.42(A)(3)

Both of the restrictions discussed above apply to the former Deputy Treasurer for one year from the date he left his position at the Treasurer’s Office. These restrictions will expire on December 17, 2011.

Disclosure of Confidential Information—R.C. 102.03(B)

The former Deputy Treasurer should also be aware of R.C. 102.03(B), which reads:

No present or former public official or employee shall disclose or use, without appropriate authorization, any information acquired by the public official or employee in the course of the public official's or employee's official duties that is confidential because of statutory provisions, or that has been clearly designated to the public official or employee as confidential when that 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.

The former Deputy Treasurer is prohibited from disclosing or using, without authorization, any confidential information that he acquired in the course of his official duties at the Treasurer's Office. Unlike the restrictions discussed above, there is no time limit on this prohibition. Adv. Op. No. 88-009.

Conclusion

This advisory opinion 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.

Therefore, it is the opinion of the Ohio Ethics Commission, and the Commission advises that: Division (A)(1) of Section 102.03 of the Revised Code prohibits the former Deputy Treasurer of the State of Ohio from representing his new employer, a bank, or its customers or employees, before any public agency on any matter in which he personally participated during his employment at the Treasurer's Office. Further, Division (A)(3) of Section 2921.42 of the Revised Code prohibits the former Deputy Treasurer of the State of Ohio from profiting from any unbid contracts that he authorized or participated in authorizing during his employment at the Treasurer's Office.

By my signature below, I certify that Advisory Opinion No. 2011-03 was rendered by the Ohio Ethics Commission at its meeting on March 24, 2011.

Ben Rose, Chair
Ohio Ethics Commission