



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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Advisory Opinion Number 85-008

July 24, 1985

Syllabus by the Commission:

- (1) The Ohio Ethics Law and related statutes do not, per se, prohibit a systems manager for a firm operating a cable television franchise under an agreement with a city from being a candidate for city council, but would condition his conduct if elected.
- (2) Division (A)(1) of Section 2921.42 of the Revised Code prohibits a city council member from authorizing or otherwise using the authority or influence of his office to secure approval of a public contract between the city and his employer, including any renewal, extension, or material change in the terms or conditions of the existing franchise agreement.

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You asked whether the Ohio Ethics Law and related statutes would prohibit a systems manager for a firm operating a cable television franchise under an agreement with a city from being a candidate for city council.

You stated, by way of history, that you were a member of city council in 1981 when the city entered into a fifteen-year franchise agreement with a limited partnership operating a cable television franchise. The limited partnership recently was purchased by an out-of-state corporation, but the partnership continues to operate the franchise. You stated further that you accepted employment with the limited partnership in 1984, and that you resigned your position on city council at that time to avoid any potential violation of a city ordinance concerning conflicts of interest. Your position as service manager involves responsibility for service to customers in your area, but not sales. You indicated that the city ordinance has been amended to conform to the requirements of the Ohio Ethics Law and related statutes, and that you now seek to be a candidate for city council in the next election. You asked whether you would be prohibited from serving on city council, if elected, provided that you take no part in any deliberations or decisions regarding the franchise or other agreements with your employer.

Section 2921.42 of the Revised Code provides, in pertinent part:

(A) No public official shall knowingly do any of the following:

- (1) 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;

...

(4) Have an interest in the profits or benefits of a public contract entered into by or for the use of a political subdivision or governmental agency or instrumentality with which he is connected.

A member of city council is a "public official" as defined in Division (A) of Section 2921.01 of the Revised Code. A franchise agreement between a city and a cable television firm is a "public contract" as defined in Division (E)(1) of Section 2921.42 of the Revised Code, since it is a contract for the purchase or acquisition of cable television services by or for the use of the city. The employer of the systems manager is his "business associate" for purposes of Section 2921.42 of the Revised Code (See: Ohio Ethics Commission Advisory Opinion No. 78-006). Therefore, Division (A)(1) of Section 2921.42 of the Revised Code would prohibit a city council member who is employed as a systems manager for a cable television firm from participating in discussions, voting, or otherwise using the authority or influence of his office to secure approval of a public contract between the city and his employer. This would include any extension or renewal of the existing franchise agreement, or any changes in its terms or conditions (See: Advisory Opinions No. 82-007 and 85-004).

The next issue is whether the systems manager would have an "interest" in the profits or benefits of the contract between the city and his employer, even if he refrains from participating in discussions or voting on matters involving the franchise agreement. For purposes of Division (A)(4) of Section 2921.42 of the Revised Code, an officer, board member, partner, or major shareholder of a business would be interested in the contracts of his firm (See: Advisory Opinions No. 81-003, 81-005, and 81-008). An employee, who has neither an ownership nor a fiduciary interest in the firm, is not generally deemed to be interested in the contracts of his employer (See Advisory Opinions No. 78-006, 80-003, and 81-001). The facts indicate that the former council member is a middle level manager who is responsible for service in his area, but not for sales. Thus, if elected, he would not be deemed to have an "interest" in the profits or benefits of the franchise agreement with his city.

The candidate also should be aware that a city council member would be subject to the prohibitions of Chapter 102. of the Revised Code. For example, Division (A) of Section 102.03 of the Revised Code would prohibit him from representing his employer on any matter before the city in which he has personally participated as a public official or employee. This would include the existing agreement, which was approved while he was serving on city council. Division (B) of Section 102.03 of the Revised Code would prohibit him from releasing confidential information to his employer. Division (D) of Section 102.03 of the Revised Code would prohibit him from using his official position for personal gain or benefit. Finally, Division (C) of Section 102.04 of the Revised Code would prohibit him from receiving compensation from his employer for personal services rendered on any case, proceeding, application, or other matter before the city with which he serves.

The conclusions of this opinion are based on the facts presented, and are limited to questions arising under Chapter 102. and Section 2921.42 of the Revised Code.

Therefore, it is the opinion of the Commission, and you are so advised, that: (1) the Ohio Ethics Law and related statutes do not, per se, prohibit a systems manager for a firm operating a cable television franchise under an agreement with a city from being a candidate for city council, but would condition his conduct if elected; and (2) Division (A)(1) of Section 2921.42 of the Revised Code prohibits a city council member from authorizing or otherwise using the authority or influence of his office to secure approval of a public contract between the city and his employer, including any renewal, extension, or material change in the terms or conditions of the existing franchise agreement.


OHIO ETHICS COMMISSION
Robert Y. Farrington, Chairman