



OHIO ETHICS COMMISSION

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

Advisory Opinion Number-89-015
December 14, 1989

Syllabus by the Commission:

- (1) The Ohio Ethics Law and related statutes do not prohibit two or more members of the same law firm or other business associates from simultaneously serving as public officials within the same political subdivision; however, the Ethics Law and related statutes restrict the conduct of public officials with respect to business associates;
- (2) Section 102.03 of the Revised Code prohibits an individual from serving as a city law director where the law firm of which he is a member represents clients in adversarial actions against the city.

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You have asked whether the Ohio Ethics Law and related statutes prohibit two members of the same law firm from simultaneously serving as public officials in the same city. You have also asked whether the Ethics Law prohibits the law firm of the city law director from representing clients in adversarial actions against the city, in matters such as zoning changes or appeals, and civil service cases.

You have stated that the city law director and a member of the civil service commission are members of the same law firm. Members of this law firm, which also include members of the public officials' families, have represented clients before the city planning commission with regard to challenges or requests for changes in the zoning or planning of the city, as well as before other city boards and commissions.

There is no provision in the Ethics Law and related statutes which prohibits members of the same law firm or other business associates from simultaneously serving as public officials within the same political subdivision. There are, however, provisions which limit or restrict the conduct of public officials with respect to persons with whom they have an outside relationship which may be pertinent in a situation such as you have described.

For example, Division (A)(1) of Section 2921.42 of the Revised Code provides:

(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.

R.C. 2921.01(A) defines "public official" for purposes of R.C. 2921.42 to include any elected or appointed officer, employee, or agent of any political subdivision of the state. Therefore, city officers and employees, including a city law director and a city civil service commission member, are subject to the prohibitions of that section. See Ohio Ethics Commission Advisory Opinions No. 75-035 and 85-011.

Division (E) of Section 2921.42 defines a "public contract" for purposes of that section to include the "purchase or acquisition or a contract for the purchase or acquisition of property or services by or for the use of" any political subdivision. An employment relationship between a political subdivision and an employee is a "public contract" under R.C. 2921.42, since the political subdivision is purchasing or acquiring the services of the employee. See Advisory Opinions No. 85-003 and 85-015. See also Advisory Opinions No. 78-001 and 83-002 (concluding that a contract to provide legal services to a municipality is a "public contract" under R.C. 2921.42). Therefore, R.C. 2921.42(A)(1) would prohibit a city officer or employee from authorizing, or otherwise using the authority or influence of his office to secure approval of, the employment of any of his business associates by the city.

The partners and associates in the law firm with which the city official is associated are his "business associates" for purposes of R.C. 2921.42. In Advisory Opinion No. 85-004, the Ethics Commission indicated that business associates are persons who are joined together in a relationship for business purposes, and that the term would include partners and fellow workers. In Advisory Opinion No. 86-002, the Commission stated that business associates act together to pursue a common business purpose or enterprise. The opinion noted that an employer is the business associate of an employee, that a firm is a business associate of an agent or representative, and that law partners are business associates. Advisory Opinion No. 83-002 held that persons who are affiliated in a legal association and share expenses are business associates, and in Advisory Opinion No. 83-003, the Commission held that an attorney affiliated with a public official in a legal professional corporation is the official's business associate.

The partners and associates in a law firm are joined together in a common business purpose or enterprise. It is apparent from the foregoing that a partner or an associate in a law firm is the "business associate" of the firm and its partners, who act as his business partners and/or employers, as well as the "business associate" of the firm's other associates, his fellow employees. Therefore, the city law director or civil service commission member is prohibited from authorizing, or otherwise using his official authority or influence to secure approval of, the employment of the partners or associates in his private law firm by the city. R.C. 2921.42(A)(1) would prohibit a city official from participating with respect to any aspect of his business associate's city compensation or other terms and conditions of the business associate's city employment. See generally Advisory Opinion No. 82-003. See also Advisory Opinion No. 88-004 (R.C. 102.-03(D), which prohibits a public official or employee from using his authority or influence to secure anything of value that is of such character as to manifest a substantial and improper influence upon him with respect to his duties, generally prohibits a public official from participating in any matter affecting the interests of his business associate).

It should be noted that Division (A)(4) of Section 2921.42 prohibits a public official from having an interest in the profits or benefits of a public contract entered into by or for the use of

the political subdivision with which he is connected. The civil service commission member is, therefore, prohibited by R.C. 2921.42 from receiving a share of the compensation earned by the member of his law firm in his capacity as law director regardless of the financial agreement established by the law firm. See Advisory Opinion No. 83-002. Similarly, the city law director would be prohibited from receiving a share of the compensation received by the member of his law firm in his capacity as civil service commission member. R.C. 2921.42 would also prohibit the law firm from contracting with the city where partners of the law firm serve as city officials, and would prohibit the city officials from authorizing, or using the authority or influence of their official positions to secure a contract for services between their law firm and the city. See Advisory Opinion No. 86-004.

Your second question is whether the private law firm of the city law director is prohibited from representing clients in adversarial actions against the city.

Divisions (D) and (E) of Section 102.03 of the Revised Code read as follows:

(D) No public official or employee shall use or authorize the use of the authority or influence of his 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 him with respect to his 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 him with respect to his duties.

The term "public official or employee" is defined to include any person who is elected or appointed to an office or is an employee of a municipality. Therefore, a city director of law is subject to the prohibitions of R.C. 102.03(D) and (E). 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). Client fees fall within the definition of "anything of value" for purposes of R.C. 102.03. See Advisory Opinion No. 86-004.

In order to address your question under R.C. 102.03, it is first necessary to examine the official duties of a city law director. A city law director is generally elected to office, see R.C. 733.49, and "shall serve the several directors and officers provided in Title VII of the Revised Code as legal counsel and attorney." See R.C. 733.51. R.C. 733.53 directs that "the law director, when so required by the legislative authority of the city, shall prosecute or defend on behalf of the city, all complaints, suits, and controversies in which the city is a party, and other suits, matters, and controversies as he is directed to prosecute. See also R.C. 733.54 (the law director must provide legal opinions to city officials).

In Advisory Opinion No. 88-004, the Commission held that a public official or employee is prohibited by R.C. 102.03(D) from participating in matters which would provide such a definite and particular benefit for the public official that his private interest could impair his independence of judgment or unbiased discretion in making his official decisions or fulfilling his public responsibilities. As stated in Advisory Opinion No. 88-004, "R.C. 102.03(D) clearly

prohibits [a city official] from participating in matters that would affect his personal pecuniary interest."

If the city law director is a partner in the law firm which represents clients against the city and is entitled to a share of the clients' fees in those matters against the city, then those matters against the city would affect the law director's personal, pecuniary interest. It is clear that the clients' fees paid to the law director's law firm for representation in matters against the city would be of such character as to manifest a substantial and improper influence on the law director with respect to his duty to serve as legal counsel and attorney for city officials and to prosecute and defend all complaints, suits, and controversies in which the city is a party. The law director would have a definite, pecuniary interest in seeing that the law firm won the case against the city. Such an interest obviously works to the detriment of the city's interests, and impairs the objectivity and independence of judgment of the law director with regard to his duties as law director.

R.C. 102.03(D) would, therefore, prohibit the law director from participating in an action against the city in which a member of his law firm represented the party opposing the city, and where he would receive a distributive share of the client's fee in such action.

Applying the above analysis to the prohibitions of Division (E) of Section 102.03, it is must be concluded that the city law director would be prohibited from accepting clients' fees paid for representation in matters pending against the city, since they would be of a substantial and improper character with respect to the law director's duties. See generally Advisory Opinion No. 88-002. The issue is thus raised whether the law director would be prohibited from participating in matters against the city where he does not receive a distributive share of the client's fees due to the prohibition of R.C. 102.03(E), or where he is an associate in the law firm and not entitled to a share of clients, fees.

The Commission has held in Advisory Opinion No. 88-004, that R.C. 102.03(D) prohibits a public official from using his official authority or influence with regard to any matter that would provide a definite and particular benefit or detriment to the interests of his business associate, unless the official can demonstrate that, under the circumstances, his independence of judgment in making official decisions could not be impaired by his business associate's interests. In Advisory Opinion No. 88-005, it was held that the private employer of a public official or employee may be considered to be his business associate, so that the public official or employee would be prohibited from participating in matters affecting the interests of his private employer. See also Advisory Opinion No. 80-003. It must be concluded that, generally, the relationship between an official and his law firm is such that the interests of the law firm could impair the objectivity of the public official, regardless of whether the official is a partner or employee of the firm. This must certainly be the case where a law director is opposing his own law firm in an adversarial proceeding. The loyalties of the law director to the city, his client and employer, and the law firm in which he has an ownership interest and/or by which he is employed are clearly strong in nature and are certainly in conflict where the city and the law firm stand on opposing sides in litigation or other adversarial proceedings.

R.C. 102.03(D) would, therefore, prohibit the law director from participating in any manner in a case or proceeding where his law firm is representing a client against the city, regardless of whether he received a distributive share of the client's fee in such matter. In effect, this would preclude the law director's firm from representing clients in matters against the city. Cf. Code of Professional Responsibility DR 5-105 (D) (if a lawyer is required to decline employment or to withdraw from employment on the basis that his independent professional judgment on behalf of a client would be adversely affected by the proffered employment, no partner or associate of his or his firm may accept or continue such employment.) Although a city may employ assistant law directors, they serve under the authority and supervision of the law director. As noted above, a city law director is generally elected to office and is required by law to serve as the city's legal advisory and attorney in matters in which the city is a party. There is no one to whom an assistant law director could report, other than the law director, with respect to the legal aspects of the progress or decisions to be made regarding a case against the city. It would be impossible for the law director to abstain from any case in which the city is a party, even though one of his subordinates may handle the daily details of the case. See general Advisory Opinions No. 85-002 and 89-006. Furthermore, the law director is generally empowered to employ, dismiss, and set the compensation for assistant law directors. It would be an untenable position for the assistant law director to objectively fulfill his duties in a case where his employer's law firm served as opposing counsel. Therefore, the law firm of the law director is precluded from representing clients in matters against the city.

Your questions also raise issues concerning the professional conduct of attorneys under the Code of Professional Responsibility. These issues are not within the jurisdiction of the Ethics Commission, but should be referred to the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court. See, e.g., DR5-105, 8-101, 9-101(B).

This advisory opinion is based on the facts presented, and is rendered only with regard to questions arising under Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code. Therefore, it is the opinion of the Ethics Commission, and you are so advised, that: (1) The Ohio Ethics Law and related statutes do not prohibit two or more members of the same law firm or other business associates from simultaneously serving as public officials within the same political subdivision; however, the Ethics Law and related statutes restrict the conduct of public officials with respect to business associates; and (2) Section 102.03 of the Revised Code prohibits an individual from serving as a city law director where the law firm of which he is a member represents clients in adversarial actions against the city.



Richard D. Jackson, Chairman
Ohio Ethics Commission