



OHIO ETHICS COMMISSION
8 East Long Street, Suite 1200
Columbus, Ohio 43215-2940
Telephone: (614) 466-7090
Fax: (614) 466-8368

Advisory Opinion Number 98-002
May 15, 1998

Syllabus by the Commission:

(1) Division (D) of Section 102.03 of the Ohio Revised Code prohibits a city council member from discussing, deliberating, voting, or otherwise participating, formally, or informally, in the decisions of the city she serves that involve a proposed commercial development that borders residential property her brother owns;

(2) The relationship between a city council member and her brother is such that the council member's objectivity and independence of judgment would be impaired where a land-use matter pending before city council will result in a definite benefit or detriment to the value of property owned by her brother.

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You ask whether the Ohio Ethics Laws and related statutes would prohibit you from participating in matters pertaining to a proposed commercial development if the development borders residential property that your brother owns and which he has optioned to the developer of the proposed commercial development.

As explained below, R.C. 102.03(D) prohibits you from discussing, deliberating, voting, or otherwise participating, formally, or informally, in the decisions of the public entity you serve that involve a proposed commercial development that borders residential property that your brother owns and which he has optioned to the developer of the proposed commercial development.

Facts

You state that you are a city council member. You state that the city must decide to approve or disapprove a proposed commercial development that borders residential property that your brother owns and which he has optioned to the developer of the proposed commercial development. You state that your brother believes that the developer must purchase his residential property regardless of whether the city approves the commercial development. You state that you do not own the property jointly with your brother nor stand to inherit the property.

General Prohibition Imposed by R.C. 102.03(D)-Land Use Matters

The instant situation implicates the prohibition imposed by R.C. 102.03(D), which reads:

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.

As a city council member, you fall within the definition of "public official or employee" for purposes of R.C. 102.03 and are subject the prohibition imposed by Division (D). R.C. 102.01(B) and (C). Ohio Ethics Commission Advisory Ops. No. 88-004, 88-005, and 89-008.

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. R.C. 102.03(G). A definite, pecuniary benefit to another person or entity is considered to be a thing of value under R.C. 102.03(D). Adv. Op. No. 88-004. The Ethics Commission has held that the beneficial or detrimental financial impact upon the value of real property, created by a public agency's land-use decision, is a thing of value for purposes of R.C. 102.03(D). Adv. Ops. No. 88-005 and 92-019. See also Adv. Ops. No. 79-003, and 85-006.

The Ethics Commission has held that R.C. 102.03(D) prohibits a public official or employee from participating, as a public official, formally or informally, with respect to land-use decisions affecting property bordering or near the public official's or employee's property because the land-use decision could have a definite and direct beneficial or detrimental financial impact upon the value of the official's or employee's property. Adv. Ops. No. 88-004, 92-013, and 92-019. For example, in Advisory Opinion No. 92-019, the Ethics Commission held that R.C. 102.03(D) prohibited a city council member from voting, discussing, deliberating, or otherwise using the authority or influence of his public position, formally or informally, in actions of the city council regarding a proposed road extension that would be located approximately 150 feet from the council member's property.

Prohibition Imposed by R.C. 102.03(D)-Interests of a Family Member

The facts in the instant situation differ from the situation that was addressed in Advisory Opinion No. 92-019 in that it is your brother, not you, who owns the property that borders the proposed commercial development. As set forth above, you state that you do not own the property jointly with your brother nor stand to inherit the property. Therefore, it is your brother's financial interests, rather than your own, that may be affected by city council's decision. The prohibition of R.C. 102.03(D) is, nevertheless, still relevant.

As explained below, it is not necessary for a public official or employee to have a personal pecuniary interest in a matter to invoke the prohibition imposed by R.C. 102.03(D). When originally enacted, R.C. 102.03(D) prohibited a public official or employee from using his official position to secure anything of value for himself "that would not ordinarily accrue to him in the performance of his official duties, which thing is of such character as to manifest a substantial and improper influence upon him with respect to his duties." The Ethics Commission generally interpreted this language to prohibit a public official or employee from participating in matters that would benefit the public official's or employee's own financial interests. Adv. Ops. No. 79-003, 80-007, and 85-006.

The Commission also concluded that a public official or employee is prohibited from acting on matters that affect the property, business, or other financial interests of his spouse or his employer, if the official himself would derive some benefit as a result of his actions. Adv. Ops. No. 79-008, 80-003, and 84-010. Cf. Adv. Op. No. 86-007 (R.C. 102.03(D) "does not apply to things of value accruing to a family member or business associate, provided the public official does not benefit personally;" however, it would create the appearance of impropriety for a public official or employee to participate in discussions or vote on matters concerning a business owned by a family member or business associate, even though he has no personal financial interest).

Am. Sub. H.B. 300, 116th Gen. A. (1986) (eff. September 17, 1986) deleted the requirement that the thing of value not ordinarily accrue to the public official or employee in the performance of his official duties, thereby broadening the scope of the prohibition imposed by R.C. 102.03(D). Adv. Op. No. 88-004. Therefore, it is no longer necessary to demonstrate that a public official or employee would himself derive a personal, pecuniary benefit from his participation in an official matter in order to show a violation of R.C. 102.03(D). Id. However, R.C. 102.03(D) still requires that the thing of value, whether it is secured for the official or for someone else, be of such a character as to manifest a substantial and improper influence upon him with respect to his duties. Id.

The Ethics Commission has held that R.C. 102.03(D), in its amended form, prohibits a public official or employee from participating in matters that will benefit parties with whom he has a close family, economic, or business relationship because the relationships may impair the public official's objectivity and independence of judgment. Adv. Ops. No. 88-004, 89-008, and 97-002. For example, in Advisory Opinion No. 88-004, the Ethics Commission held that R.C. 102.03(D) prohibits a member of a city council from voting, deliberating, participating in discussions, or otherwise using his official authority or influence with regard to any matter that would provide a definite and particular pecuniary benefit or detriment to property owned by a business associate, because the relationship between the public official and his business associate is such that the official's objectivity and independence of judgment could be impaired by the relationship.

With respect to family members, the Commission has specifically stated that R.C. 102.03(D) prohibits a public official or employee from using her authority or influence, formally or informally, to secure anything of value for members of the official's or employee's family. See Adv. Ops. No. 89-008 (spouse and children), 90-004 (spouse), 91-004 (spouse), 92-012 (spouse), and 97-004 (children). The relationship between brothers and sisters, like the relationships between spouses or between a parent and child, is so close that a public official's or employee's objectivity and independence of judgment could be impaired if he is asked to consider matters that would result in a benefit or detriment to his sibling. Adv. Op. No. 90-005 (A school board member is prohibited, by R.C. 102.03(D), from using his position of authority over school district employees to secure contracts for a company owned by himself, his parents, and his siblings.). Compare Adv. Ops. No. 86-010 and 92-002 (Public officials are prohibited, by R.C. 2921.42(A)(1), from authorizing public contracts in which "family" members have an interest. The Commission has defined family to include siblings for purposes of this prohibition.).

As explained above, R.C. 102.03(D) prohibits a public official or employee from participating in matters that will affect the financial interests of parties with whom he has a close family relationship. In the situation you have presented, you would be prohibited, by R.C. 102.03(D), from participating, as a city council member, formally or informally, with respect to land use decisions affecting property bordering or near your brother's property because the land use decision could have a definite and direct beneficial or detrimental financial impact upon your brother's property.

As stated above, your brother believes that the developer must purchase his residential property regardless of whether the City approves or disapproves the proposed commercial development. Despite this fact, it is important to note that the specific land-use decision before the city council involves the proposed commercial development and that the proposed development is adjacent to your brother's residential property. It is apparent that this proposed commercial development is the impetus that has provided the motivation for the developer to seek the option from your brother. In addition, it is unclear whether the developer and your brother have agreed to a purchase price for the property in question. If they have not agreed to a price, the council decision could affect the price your brother will charge for the property. Thus, it appears that the proposed commercial development already has created a definite impact on your brother's property.

Therefore, R.C. 102.03(D) prohibits you from discussing, deliberating, voting, or otherwise participating, formally, or informally, in the decisions of the public entity you serve that involve a proposed commercial development that borders residential property that your brother owns and which he has optioned to the developer of the proposed commercial development.

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

Division (B) of Section 102.03 of the Revised Code reads as follows:

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

R.C. 102.03(B) will prohibit you from disclosing confidential information to your brother, the developer, or any other party, or from using such confidential information without authorization. No time limitation exists for this prohibition and it is effective while you serve and after you leave office. Adv. Op. No. 88-009.

This advisory opinion is based on the facts presented. It 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.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that: (1) Division (D) of Section 102.03 of the Ohio Revised Code prohibits a city council member from discussing, deliberating, voting, or otherwise participating, formally, or informally, in the decisions of the city she serves that involve a proposed commercial development that borders residential property her brother owns; and (2) The relationship between a city council member and her brother is such that the council member's objectivity and independence of judgment would be impaired where a land-use matter pending before city council will result in a definite benefit or detriment to the value of property owned by her brother.

Sister Mary Andrew Matesich

Sister Mary Andrew Matesich, Chair
Ohio Ethics Commission