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May 7, 2012

Robert W. Chase, Ph.D.
[redacted]

Dear Dr. Chase:

On February 24, 2012, the Ohio Ethics Commission received your letter requesting an advisory opinion. In your letter, you explained that you have been a member of the Ohio Oil and Gas Commission in 2008. You asked for guidance about your private consulting business formed in 2011.[1] You explained that:

- The Oil and Gas Commission is an administrative appeals board that hears appeals from actions taken by the Chief of the Division of Oil and Gas Resources Management of the Ohio Department of Natural Resources (ODNR)[2];
- Appeals before the Commission generally involve permitting and regulation of oil and gas operations;
- In 2011, you formed a limited liability corporation called CHASELAND, LLC (the Company);
- Through the Company, you provide services to landowner groups and associations whose members are interested in leasing properties to oil and gas producers for the development of wells;
- You serve as a consultant and facilitator between oil and gas companies and landowners;
- For your services, you receive a consultant's fee from the landowners' group. However, as a service to the landowners, you negotiate to have the fee paid by the oil and gas company; and
- To date, you have not participated in any hearings or other matters on appeals involving companies or individuals with whom you have negotiated on behalf of the Company or as a landowner consultant.

At its meeting in April, the Ethics Commission asked for additional information about your private consulting business which you have provided. In your cover letter, you more fully explained that your role has been to place landowner groups in contact with energy companies and pass information from landowners' organizations to representatives of energy companies. You explained that, to date, you have not received any compensation from any of these parties.

You identified these landowner organizations, attorneys, and energy companies as among those with which you have worked:

- Southeast Ohio Landowners Association (SEOLA)
- Smith-Goshen Landowners' Association
- Attorney Jennifer Garrison
- Bricker & Eckler Law Firm
- Stoneman & Okey Law Firm
- Chesapeake Energy
- PetroEdge
- Anadarko Petroleum
- Hilcorp
- Chevron
- EXCO
- XTO/Exxon
- Marathon
- CONSOL Energy
- Hess
- Flat Rock Resources

Finally, you stated that you anticipate that appeals may be brought before the Commission involving an oil and gas producer, landowner, or landowner association with which you have had dealings.

Question and Brief Answer

> If a matter comes before the Oil and Gas Commission involving an oil and gas producer, landowner, or landowner association with which you have negotiated or from which you have received or are owed payment, are you required to remove yourself from consideration of that matter?
>
> Yes.

Conflicts of Interest and Private Consulting Company

Many state boards and commissions are composed of individuals who also hold full-time private employment or engage in other kinds of business activities. If a state commission member's private business or clients are regulated by or interested in matters before the commission on which he sits, the commission member will have a conflict of interest in those matters.

The Ethics Law does not prohibit a person from serving on a state commission because he has a conflict of interest on matters before the commission. However, the Ethics Law does prohibit the commission member from participating in those matters.

These restrictions apply to you as a member of a state commission.[3] Therefore, while you are a member of the Oil and Gas Commission, you will be prohibited from:

A. Acting as a Commission member on any matter that affects the Company or its customers; and

B. Accepting compensation from any customers of the Company unless you can withdraw from matters before the Commission that affect them.

Acting on Matters that Affect the Company or its Customers

The first relevant restriction is R.C. 102.03(D), which provides:

> 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.

The financial benefit or detriment resulting from a decision by the Oil and Gas Commission is a thing of value for purposes of R.C. 102.03.[4] R.C. 102.03(D) prohibits a public official from using his public position to secure a financial benefit or avoid a financial detriment for himself or for his private business or customers.[5] The application of R.C. 102.03(D) is dependent upon the facts and circumstances of each situation.[6]

While you are operating the Company, R.C. 102.03(D) prohibits you from taking any action, as a member of the Oil and Gas Commission, to secure any benefit for yourself, or for the Company and its customers. Your objectivity and independence of judgment could be impaired if you were to participate in matters that would result in a definite and direct benefit or detriment to the Company or its customers.

Therefore, if an appeal comes before the Oil and Gas Commission that affects the Company or its customers, you are required to withdraw from that appeal. You cannot participate, in any way, in the Commission's decision on that appeal. You are prohibited from voting, discussing, deliberating, or taking any other official action as a Commission member. You are also prohibited from making recommendations to other Commission members, Commission staff, or any official or employee at ODNR.

You must withdraw from appeals before the Oil and Gas Commission that affect any landowners or landowner associations for which you have performed any work, facilitation, or negotiation services. You must also withdraw from each and every Oil and Gas Commission activity that affects any oil and gas companies, law firms, or others that have paid fees to, or owe payments to, the Company.

Accepting Fees from Landowners, Landowner Associations, or Oil and Gas Companies

You are also subject to a second conflict of interest prohibition, R.C. 102.03(E), which prohibits a public official from soliciting or accepting anything of value that could have a substantial and improper influence on the official. Payment, in any form, for services is a thing of value.[7] The Ethics Commission has concluded that R.C. 102.03(E) prohibits a public official

from accepting compensation for private business activities from anyone who is regulated by the agency he serves unless the official can and does withdraw from matters affecting the source of payment.[8]

Therefore, R.C. 102.03(E) prohibits you from accepting payment for services, from any person, company, or organization that is subject to regulation by the Oil and Gas Commission, unless you can withdraw from matters that affect them.[9]

Other Restrictions

While you serve on the Oil and Gas Commission, you are also subject to the other restrictions in the Ethics Law. These two restrictions are of specific note:

1. R.C. 102.04(A) prohibits you from receiving compensation to perform services for any person on any matter that is before the commission you serve. You cannot be paid, by any company, organization, or person, to perform services on matters that are or will be before the Oil and Gas Commission.[10]

2. R.C. 102.03(B) prohibits you from disclosing or using confidential information you acquire in your public service. If you have access to confidential information in the course of your service on the Oil and Gas Commission, R.C. 102.03(B) prohibits you from disclosing that information to any private client or customer. R.C. 102.03(B) also prohibits you from using the confidential information in your private business role.

The Ohio Ethics Commission applied this informal advisory opinion at its meeting on May 7, 2012. 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

The Ohio Ethics Commission Advisory Opinions referenced in this opinion are available on the Commission's Web site: www.ethics.ohio.gov.

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[1] Your other question, about fundraising activities of Marietta College, will be answered in a separate advisory opinion.

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[2] R.C. 1509.35-6. (These statutes grant the Oil and Gas Commission appellate jurisdiction over actions of the Chief of the Division of Oil and Gas Resources Management. The Oil and Gas Commission is an appellate administrative body.)
[3] R.C. 102.01(B) and (C); R.C. 1509.35.
[4] R.C. 1.03 and R.C. 102.01(G); Ohio Ethics Commission Advisory Opinions No. 85-012, 90-002, and 90-012.
[5] Adv. Ops. No. 89-016, 90-008, 91-006, and 2007-01.
[6] Adv. Ops. No. 86-011 and 87-008.
[7] Adv. Op. No. 96-004.
[8] Adv. Op. No. 2008-02.
[9] Id.
[10] Adv. Op. No. 2007-03.