



## OHIO ETHICS COMMISSION

THE ATLAS BUILDING  
8 EAST LONG STREET, SUITE 210  
COLUMBUS, OHIO 43215  
(614) 466-7090

Advisory Opinion No. 83-008  
July 27, 1983

Syllabus by the Commission:

The Ohio Ethics Law and related statutes do not prohibit a city council member who is affiliated with the mayor in a legal professional corporation from voting on an ordinance increasing the salary of the office of mayor, effective during the next term following an election.

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You asked whether the Ohio Ethics Law and related statutes prohibit a city council member who is affiliated with the mayor in a legal professional corporation from voting on an ordinance authorizing a salary increase for the office of mayor, effective during the next term following an election.

You stated, by way of history, that the proposed ordinance providing a salary increase for the office of mayor is currently under consideration, but it would take effect on January 1, 1984, the beginning of the next term. The election will take place on November 8, 1983, a few months after the vote on the proposed ordinance. The present mayor may seek re-election, but has not announced that he will do so. Also, you stated that neither the mayor or the council member has a legal claim or right to any interest in the salary the other receives from the city.

Division (A)(1) of Section 2921.42 of the Revised Code states:

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

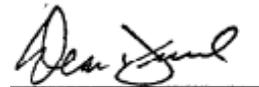
(1) Authorize, or employ the authority or influence of his office to secure authorization of any public contract in which he, a member of his family, or any of his business associates has an interest.

A city council member is a "public official" as defined in Division (A) of Section 2921.01 of the Revised Code (See: Ohio Ethics Commission Advisory Opinion No. 78-001). An attorney affiliated with a public official in a legal professional corporation is a "business associate" for purposes of the prohibition (See: Advisory Opinion No. 83-002). Thus, the city council member would be prohibited from participating in discussions, voting, or otherwise using his authority or influence to secure authorization of a change in the terms or conditions of a "public contract," as defined in Division (E)(1) of Section 2921.42 of the Revised Code, in which the mayor has an interest.

However, the key issue is whether the mayor is serving under an employment contract with the city. Compensation for the office of mayor is established by city council, the legislative authority of the municipal corporation, but the salary of a municipal officer may not be changed during the term of office for which he was elected or appointed (See: R. C. 731.07 and 731.08). An elected mayor of a municipal corporation occupies a public office (See: R. C. 733.01 et seq.). Under Ohio law, a public office is conferred by law and not by contract. State ex rel. Gordon v. Barthalow, 150 Ohio St. 499 (1948). The compensation or salary of an officeholder is an incident of public office, and the right of a public officer to his salary or compensation does not depend on contract, but is a creature of law. Wright v. Lorain, 70 Ohio App. 337 (1942); State ex rel. Wilcox v. Woldman, 157 Ohio St. 264 (1952); State ex rel. Randel v. Scott, 95 Ohio App. 197 (1952). Therefore, the proposed ordinance would not be a change in the terms or conditions of a "public contract," and the prohibition would not apply.

The conclusions of this opinion are based upon the facts presented, and are rendered only with regard to questions arising under Chapter 102. and Section 2921.42 of the Revised Code.

Therefore, it is the conclusion of the Ohio Ethics Commission, and you are so advised, that the Ohio Ethics Law and related statutes do not prohibit a city council member who is affiliated with the mayor in a legal professional corporation from voting on an ordinance increasing the salary of the office of mayor, effective during the next term following an election.

  
Dean S. Lucal, Chairman  
Ohio Ethics Commission