



OHIO ETHICS COMMISSION

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

Advisory Opinion No. 84-002
March 15, 1984

Syllabus by the Commission:

Division (A)(4) of Section 2921.42 of the Revised Code prohibits a private law firm consisting of two assistant county prosecutors from being retained to represent the county on collective bargaining issues.

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You asked whether the Ohio Ethics Law and related statutes prohibit a private law firm consisting of two assistant county prosecutors from being retained to represent the county on collective bargaining issues.

You stated, by way of history, that you are a county prosecutor. You indicated that recent legislation concerning collective bargaining in the public sector will greatly increase the potential workload for your office. Consequently, you have advised the county commissioners that the office of the prosecuting attorney does not have the resources or expertise to represent the county on collective bargaining matters, and that they should enter a contract with outside counsel to obtain such representation. You asked whether the county commissioners are prohibited from retaining a private law firm consisting of two assistant county prosecutors to represent the county in collective bargaining issues. The assistant county prosecutors would be providing legal services as independent contractors on their own time and in their private capacity.

Division (A)(4) of Section 2921.42 of the Revised Code prohibits a public official from having an interest in a public contract with the entity of government with which he is connected. An assistant county prosecutor is a "public official" as defined in Division (A) of Section 2921.01 of the Revised Code. A contract between the county and a private law firm for the provision of legal services on collective bargaining issues is a "public contract" as defined in Division (E)(1) of Section 2921.42 of the Revised Code. If a private law firm consisting of two assistant county prosecutors were retained to provide contract legal services to the county, the assistant county prosecutors would have an interest in that contract. Consequently, Division (A)(4) of Section 2921.42 of the Revised Code prohibits those assistant county prosecutors from entering into such a contract with the county with which they serve.

Division (C) of Section 2921.42 provides an exemption from the prohibitions of Division (A). However, the criteria for the exemption of Division (C) are strictly applied, and the requirement that the goods or services be "unobtainable elsewhere for the same or lower cost" must be demonstrated by some objective standard (See: Ohio Ethics Commission Advisory Opinion No. 83-004). It would be extremely difficult to demonstrate that legal services provided

by the assistant prosecuting attorneys would be "unobtainable elsewhere for the same or lower cost."

The conclusions of this opinion are based on the facts presented and are rendered 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 Division (A)(4) of Section 2921.42 of the Revised Code prohibits a private law firm consisting of two assistant county prosecutors from being retained to represent the county on collective bargaining issues.


Richard D. Jackson, Chairman
OHIO ETHICS COMMISSION