



OHIO ETHICS COMMISSION
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Advisory Opinion Number 90-002
January 18, 1990

Syllabus by the Commission:

(1) Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a Department of Agriculture meat inspector from owning and operating a meat processing plant where he is required to inspect his own plant or plants which would be in competition with his business;

(2) Division (D) of Section 102.03 of the Revised Code prohibits a Department of Agriculture meat inspector who owns a meat processing plant from using the authority or influence of his official position to advance the interests of his private business.

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In your letter to the Ohio Ethics Commission you ask whether the Ohio Ethics Law and related statutes prohibit an Ohio Department of Agriculture meat inspector from purchasing and operating a meat processing plant in light of the fact that: (1) the plant is regulated by his own state department; and (2) his duties include inspecting a meat processing plant that is a competitor of the plant which he desires to purchase.

You state that each meat inspector in the state of Ohio is assigned by the Department of Agriculture to inspect all operations within a specific district where animals are slaughtered and prepared for food purposes; Ohio is divided into thirteen districts. The plant which the meat inspector is contemplating purchasing is in a district which is adjacent to his assigned district and therefore he would not be responsible for inspecting his own plant. The plant the meat inspector is interested in purchasing is a full service plant which buys and slaughters livestock for processing into meat products for retail and wholesale markets and also provides custom slaughtering services for individual customers.

You also state that another full service meat processing plant is located within a twenty-mile radius of the plant which the meat inspector desires to purchase and is within the meat inspector's assigned district. You state it is reasonable to assume that the marketing area of a small meat processing plant lies within a fifty-mile radius, and therefore this plant is a competitor of the plant which the meat inspector desires to purchase and operate.

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

(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 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.

R.C. 102.01(B) defines a "public official or employee" for purposes of Chapter 102. to include any person who is an employee or any public agency. R.C. 102.01(C) defines "public agency" to include any department of the state. Therefore, an Ohio Department of Agriculture meat inspector is a "public official or employee" who is subject to the prohibitions set forth in R.C. 102.03(D) and (E). See Ohio Ethics Commission Advisory Opinion No. 89-010.

R.C. 1.03 defines "anything of value" for purposes of R.C. 102.03 to include money and every other thing of value. See R.C. 102.01(G). A definite pecuniary benefit is considered to be a thing of value under R.C. 102.03(D) and (E). See Advisory Opinions No. 79-008, 85-006, 85-011, and 86-007. Therefore, a financial interest in a meat processing plant would fall under the definition of "anything of value." See Advisory Opinion No. 86-007.

The first issue in the instant situation is whether the meat inspector may own and operate a meat processing plant that is regulated by his state agency. The Ethics Commission has consistently held that public officials and employees are not prohibited by the Ohio Ethics Law from operating a private outside business so long as no conflict of interest exists between the public officials or employee's public position and private interests. See Advisory Opinions No. 84-009, 85-006, 86-007, 86-008, and 87-006. The Commission has held that R.C. 102.03(D) prohibits a public official or employee from participating in the discussions or decisions of his public agency regarding the interests of a business in which he has an ownership interest. See Advisory Opinions No. 86-004 and 86-007.

The Ohio Department of Agriculture is statutorily required to inspect all processing operations at establishments where animals are slaughtered and prepared for food purposes. See generally R.C. Chapter 918. Therefore, it is apparent that the meat processing plant which the meat inspector desires to purchase and operate is an establishment that is regulated by his own state agency. If the plant the meat inspector desires to purchase were located within the district to which he is assigned, then R.C. 102.03(D) and (E) would prohibit him from purchasing and operating the plant. See Advisory Opinions No. 84-012, 89-006, and 89-010. As stated above, however, the meat inspector is assigned to a district which does not include the plant which he desires to purchase, and therefore, the meat inspector would not be responsible for inspecting his own plant if he were to purchase and operate the plant.

However, the issue remains whether, if the meat inspector were to own and operate a meat processing plant, his participation in matters affecting a competitor would be of such character as to manifest a substantial and improper influence upon him with respect to the duties assigned to him by the Department of Agriculture. The application of R.C. 102.03 is a factual matter which is dependent on the facts and circumstances of each individual situation. See Advisory Opinion No. 89-003.

The Ethics Commission has held that R.C. 102.03 prohibits a public official or employee who owns a private business from performing his official duties in a manner which would provide an economic advantage for his business. See Advisory Opinions No. 84-012, 84-013, 85-013, and 85-014. The Commission also addressed the application of R.C. 102.03 to a situation where a public official or employee with a private business serves in a regulatory capacity over his business competitors in Advisory Opinion No. 86-007, holding that:

[The public officials or employees] participation in certain issues concerning his competitors may present a "conflict of interest" if his private business were to benefit from a particular licensing or regulatory decision. . . . The exact limitations and restrictions on the conduct of a particular [official or employee] cannot be determined without additional facts.

R.C. 102.03 in this instance would prohibit the meat inspector from making a decision or recommendation in a matter affecting a competitor. An inspector of a regulatory state department holds a position of power and authority over the establishments to which he is assigned. A Department of Agriculture meat inspector has the responsibility to provide services which fulfill the statutorily mandated and defined duties of the Department of Agriculture in an objective and impartial manner. See Advisory Opinion No. 89-010. A meat inspector who, in the performance of his duties, would decide matters affecting the pecuniary interests of a competitor would be subject to an inherent conflict or divided loyalties such that his independence and objectivity of judgment could be impaired since the decisions he made could secure a pecuniary benefit for his private business.

For example, you have stated that a meat inspector is required, as part of his official duties and responsibilities, to suspend meat processing operations at an establishment if he has determined that unsanitary conditions exist. If the meat inspector suspended operations at his competitor's plant, then potential customers of the closed plant would need to seek an alternative supplier of meat processing services. It is apparent that affected customers seeking an alternative source of processing services would likely patronize a plant located within the same marketing area of the closed plant. In this instance, the affected customers could patronize the meat inspector's plant, and therefore the meat inspector could realize a pecuniary gain from his official action. Also, you have stated that the meat inspector would have access to his competitor's invoices which contain customer names and product pricing information if it were necessary for him to trace adulterated or misbranded products which had originated at his competitor's plant. It is apparent that this information could be utilized by the meat inspector in the marketing and pricing of his own plant's products. If the meat inspector contacted his competitor's customers to trace adulterated or misbranded products and they were withdrawn from the market, then it is reasonable to assume that the customers could use the meat inspector's plant as an alternative source of products since, as described above, affected customers would seek alternative sources within their own marketing area.

Furthermore, any adverse decision by the inspector involving his competitor could automatically give rise to a challenge by the competitor and create controversy that the meat inspector's regulatory decision was improperly motivated. On the other hand, it is possible that an inspector, in the circumstances described above, may, in order to avoid the appearance of an

attempt to benefit his private business, decide matters involving a competing plant more leniently than he would if the plant were not in competition with his own business. Such a decision may adversely affect the health and safety of the public. It is plain that the relationship between a meat inspector who owns and operates a private business and a competitor to his private business is such that his objectivity and impartiality could be impaired when deciding matters which would provide either a pecuniary benefit or detriment to the competitor.

The prohibitions of R.C. 102.03 serve the public interest in effective, objective, and impartial government by preventing the creation of a situation which may impair the objectivity and impartiality, and therefore the effectiveness, of a public official or employee, or his state department, in a matter affecting himself or an interested or regulated party. See Advisory Opinion No. 89-014. Therefore, R.C. 102.03 would prohibit the meat inspector from inspecting, or participating in matters affecting a competitor to his private business.

In this instance, the competitor plant is located within the district to which the meat inspector has been assigned. The Ethics Commission has held that in certain circumstances a public official or employee may withdraw from consideration of matters which would pose a conflict of interest due to the provisions of R.C. 102.03. See Advisory Opinion No. 89-006. The Commission held that such a withdrawal may not: (1) interfere with the officials or employee's performance of his duties; and (2) must be approved by the appropriate officials at his employing agency. See Advisory Opinions No. 89-006 and 89-010.

In Advisory Opinion No. 89-010, which also addressed the restrictions imposed by R.C. 102.03 upon a Department of Agriculture meat inspector's activity involving his private outside business, the Commission held:

An employee of an administrative department of the state owes his responsibility to the exercise of the public trust by performing the tasks assigned to him by his employing agency. This duty must not be impaired by a public employee's concern for his own personal interests. . . . [A] Department of Agriculture employee has the responsibility to perform the duties of a meat inspector, as described above, at the locations to which he has been assigned by his superiors. There may be instances where a state agency is willing to accommodate the personal interests of its employees and excuse or reassign an employee with outside interests in order to avoid inherent conflicts of interests where the agency determines that such special consideration would not interfere with the agency's operations or work hardship upon other employees. The state agency's determination whether such action is possible or desirable is a matter within the discretion of the affected agency. If in the instant situation, the Department of Agriculture determines it is unable, or does not desire to make special arrangements to accommodate the employee's outside interests, it is under no obligation to do so. . . . All public employees must accept necessary restrictions to avoid any possible interference with the responsibilities of their public service.

Therefore, if, the Department of Agriculture wishes to assign the meat inspector to a district outside of what the Department determines to be the marketing area of his plant, in order to accommodate his business interests, then the meat inspector is not prohibited from owning and

operating the plant which he desires to purchase. However, as the Commission held in Advisory Opinion No. 89-010, the Department is under no obligation to do so.

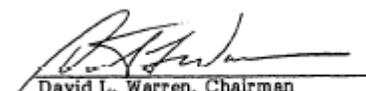
If the Department were to reassign the meat inspector to accommodate his business interests, then the provisions of R.C. 102.03 will condition the meat inspector's activity in conducting business. The meat inspector is prohibited by R.C. 102.03 from using the authority or influence of his office, either formally or informally, to solicit or secure any benefit for his private business. For example, the meat inspector is prohibited from: (1) using his relationship with other Department of Agriculture personnel to secure their intervention in regulatory decisions of the Department affecting his plant; (2) participating in any manner in matters before the Department of Agriculture that involve his business; (3) using Department of Agriculture time, resources, or facilities to operate his plant or solicit business; and (4) using his official title or position as a Department of Agriculture meat inspector while conducting business or in order to solicit business for his plant. See Advisory Opinions No. 84-012, 84-013, 85-013, and 85-014.

If the Department were not to reassign the meat inspector, then R.C. 102.03 would, as described above, prohibit him from owning and operating the plant which he desires to purchase.

This advisory opinion is based on the facts presented and 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.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that:

- (1) Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a Department of Agriculture meat inspector from owning and operating a meat processing plant where he is required to inspect his own plant or plants which would be in competition with his business; and
- (2) Division (D) of Section 102.03 of the Revised Code prohibits a Department of Agriculture meat inspector who owns a meat processing plant from using the authority or influence of his official position to advance the interests of his private business.


David L. Warren, Chairman
Ohio Ethics Commission