



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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Advisory Opinion Number 92-019
November 20, 1992

Syllabus by the Commission:

(1) Division (D) of Section 102.03 of the Revised Code prohibits 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 if the council action would have a specific beneficial or detrimental impact upon his personal, pecuniary interests;

(2) Neither Division (D) of Section 102.03 of the Revised Code, nor any other provision of the Ethics Law, prohibits, per se, a city council member from appearing, as an individual, before council in order to protect his own private property interests, so long as he pursues a course of action that is available to any other citizen who is not a city council member;

(3) Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a city council member from accepting, soliciting, or using his authority and influence to secure any benefits which are selective, differential, or in disproportion to the benefits provided to other citizens or property owners.

* * * * *

You have asked if the Ohio Ethics Law and related statutes prohibit a city council member from participating in council actions with regard to a proposed road extension where the council member's residence is within close proximity to the proposed extension. You have also asked if the city council member may, as an individual resident of the city, appear before and individually advocate his personal views to council regarding the proposed roadway extension.

By way of history, you have explained that the city is considering a road extension project of a major thoroughfare. The project will extend the road about two-thirds of a mile through an area which is currently a city park. The proposed road will have four lanes with an anticipated speed limit of between 25 and 35 miles per hour.

A member of the city council owns and resides in a home about 150 feet from the right-of-way for the proposed road extension. There is a buffer of vegetation, consisting of the council member's rear yard and a portion of the metropolitan park, between the council member's home and the proposed road extension. You have explained that the roadway project contemplates the construction of an appropriate noise buffer along the entire border of the proposed road extension. You have explained that the council member is one of a number of property owners in the city who will experience a residual impact from the road extension. You have further stated

that, due to the buffer between the roadway and the residence, "any aesthetic or economic detriment to such Council member is speculative."

The primary issue before city council, as you have explained it, is whether the road is of general benefit to the citizens of the city, such that a sufficiently valid municipal purpose exists for the expenditure of funds and disruption of the park involved in the extension of the road.

You have asked, first, if the city council member is prohibited from participating in council discussions and decision-making regarding the road extension project. R.C. 102.03 (D) provides as follows:

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 a character as to manifest a substantial and improper influence upon him with respect to his duties.

A city council member is a "public official or employee" for purposes of R.C. 102.03 (D). R.C. 102.01 (B) and (C). See also Ohio Ethics Commission Advisory Opinions No. 80-007 and 88-004. The term "anything of value" has been described by the Commission to include any definite pecuniary benefit. See R.C. 102.01(G) and 1.03; Advisory Opinions No. 79-008, 85-006, 85-011, and 88-004. Specifically, the Commission has held that an increase or enhancement in the value of property, an opportunity or ability to sell property at a profit or for a commission, or any other benefit to property, falls within the definition of "anything of value." See Advisory Opinions No. 79-003, 79-008, 80-007, 88-005, and 92-013.

The Commission has held that R.C. 102.03 (D) prohibits a public official or employee from using the authority or influence of his public position, formally or informally, in any matter which would render a particular and definite pecuniary benefit or detriment to the value of property in which he has an interest. See Advisory Opinions No. 88-004, 90-013, and 92-013. Accordingly, the city council member in your question is prohibited, by R.C. 102.03 (D), from voting, discussing, deliberating, or otherwise using the authority or influence of his public position, formally or informally, with respect to any matter before city council which would provide a definite, pecuniary benefit or detriment to property he owns. See Advisory Opinions No. 79-003, 79-008, 88-004, 88-005, and 92-013.

A city council member is also prohibited, by R.C. 102.03 (D), from using the power and authority of his position, formally or informally, over any city official or employee, to secure anything of value for himself. See Advisory Opinion No. 90-003. Therefore, the city council member in the situation you described is prohibited, by R.C. 102.03 (D), from using the authority or influence of his position over city employees, or other city officials, with respect to an issue which affects property he owns.

In the situation you have discussed, the city council member's property is located approximately 150 feet from the right-of-way for the proposed road extension. In your letter, you have pointed out that the council member is one of a number of property owners in the city who will experience a "residual impact" from the road extension. You have further stated that, due to

the green space buffer between the roadway and the residence, "any aesthetic or economic detriment to such Council member is speculative."

The Ethics Commission has stated that a city council member is not prohibited, by R.C. 102.03 (D), from participating or voting on general legislation which provides a uniform benefit to all citizens within a political subdivision, or a large portion thereof. See Advisory Opinions No. 88-004 and 92-013. Thus, a city council member may participate or vote on general legislation which provides a uniform benefit to all citizens within the city, or a large portion of the citizens, but may not participate in matters which provide a particular and definite benefit or detriment to property in which he has an interest. Advisory Opinions No. 88-004 and 92-013. The fact that some other property owners in the city may also experience an impact from the road extension does not necessarily mean that the council member's property is not directly affected and that he may participate. See Advisory Opinion No. 88-004.

Additionally, you have stated that the greenspace buffer between the council member's property and the road right-of-way indicates that the detriment to the council member's property is speculative. A public official is prohibited, by R.C. 102.03 (D), from participating, formally or informally, with respect to development matters which affect land adjacent to or near the public official's property, where the development matters would result in a beneficial or detrimental financial impact upon the public official's property. In the situation you have described, the city council member's property is approximately 150 feet from the right-of-way for the proposed road extension. R.C. 102.03 (D) would prohibit the city council member from voting, discussing, deliberating, or otherwise using the authority or influence of his public position, formally or informally, with respect to a road extension in close proximity to his residence, where the road extension would have a beneficial or detrimental impact upon the value of his property. See Advisory Opinions No. 88-004, 88-005, and 92-013.

You have also asked if the city council member may, as an individual resident of the city, appear before and individually advocate his personal views to council regarding the proposed roadway extension.

As set forth above, R.C. 102.03 (D) prohibits a city council member from using the authority or influence of his public position in any way, formally or informally, in a matter which would render a definite pecuniary benefit or detriment to property in which he has an interest. The council member in your question is, therefore, prohibited from taking any formal or informal action in his role as a city council member with regard to the issues which would have an impact on his property. However, you have asked if the council member may individually advocate on behalf of his own personal property interests before city council, even though the council member is prohibited from participating in his official capacity as a council member.

When applying the Ethics Law to specific situations, the Ethics Commission must at times strike a delicate balance between the personal rights of an individual who serves as a public official and the necessary protection afforded the public against self-dealing and conflict of interest. When an individual seeks or holds public office or employment, that individual concedes certain other options. See generally Advisory Opinions No. 87-002, 87-004, 90-013, 91-003, 91-011, 92-006, 92-008, and 92-009. See also *State v. Morgan*, No. 2294 (Clark County Court of Appeals, May 28, 1987) (upholding the constitutionality of Ohio's financial disclosure

law, and stating that, "[c]andidates for elective office cannot reasonably expect the same degree of privacy enjoyed by non-candidates"). In light of the public trust and responsibility that must be honored and respected by a public official in the exercise of his power, prestige, and influence, and in exchange for the enjoyment of that power, prestige, and influence, the public official or employee must forego certain business opportunities, such as doing business with the public entity he serves, soliciting or accepting employment from certain prohibited sources, and representing clients before the entity he serves or, under certain circumstances, before any public agency. R.C. 2921.42 (A)(4), R.C. 102.03 (A) and (E), and 102.04 (A) and (C). In order to provide unbiased decision-making for all of the citizens represented and served by public officials and employees, the Ethics Law must, at times, limit the private activities of the public officials and employees. However, the Ethics Commission, in interpreting the Ethics Law, must ensure that reasonable and justifiable limits on public officials and employees, reasonably related to the public interest served, are imposed and also that the rights afforded to all citizens are realized by public officials and employees to the greatest extent possible. A public official or employee does not, by virtue of holding a public office or public employment, and within the limits established by the Ethics Law, waive all of his rights and privileges as a citizen of this State.

For example, in Advisory Opinion No. 90-013, the Ethics Commission was asked if a board member of a port authority is prohibited, by the Ohio Ethics Law, from filing a lawsuit against the port authority he serves, or from serving on the board of the port authority because he is a defendant in a lawsuit brought by the port authority. The Commission held:

The Constitution of the State of Ohio provides: 'All courts shall be open, and every person, for an injury done to him in his lands, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.' Ohio Const. art. I, Sec. 16. An individual cannot be denied access to the courts for redress of damages because of his status as a public employee. See generally State v. Barry, 123 Ohio St. 458, 463-64 (1931). Accordingly, the Ohio Ethics Law and related statutes do not prohibit the authority member from pursuing or defending a legal claim against the city or the authority.

Advisory Opinion No. 90-013. However, the Commission went on to state that the Ohio Ethics Law and related statutes do condition the activities of the public official, taken in his official capacity, with regard to any lawsuit he may pursue.

You have asked if the city council member is prohibited, by the Ohio Ethics Law, from appearing before council and advocating, as an individual resident, on behalf of his own personal property interests, regarding the roadway extension project.

R.C. 102.03 (D) prohibits a public official or employee from "us[ing] the authority or influence of his office or employment to secure anything of value . . . that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties." There is no question but that a city council member has a significant prominence and visibility in the city he serves. A council member cannot use "the authority and influence of his office" in any way to secure any benefit for himself that could manifest a substantial and improper influence upon him with respect to his duties. Clearly, as discussed fully above, R.C. 102.03 (D) prohibits the council member from voting on or officially discussing matters that affect his private economic

interests. However, nothing within the Ohio Ethics Law would prohibit a council member from advocating, as an individual, his own interests before council in order to secure action by the city with respect to his property, where he is representing his own interests, is not compensated for the representation, has not participated as a public official in the matter, and has not misused his position, over other city officials or employees, or otherwise. See R.C. 102.04 (C) (prohibiting a public official or employee, unless he meets a specific exemption, from providing personal services for compensation in a matter pending before any department, division, or board of the governmental agency he serves); R.C. 102.03 (A) (a public official or employee is prohibited from representing any person on a matter pending before any governmental agency, including his own, if he personally participated, as a public official, in that matter); and R.C. 102.03 (D). A public official or employee will not be considered to have "use[d] the authority or influence of his office or employment" if he appears, as an individual, before council to protect his own property interests, and if he pursues a course of action, with respect to his own property, that is available to any other citizen who is not a public official or employee. When pursuing a course of action, the public official or employee must follow the same procedures, comply with the same requirements, and be limited to the same access to other officials and employees as any citizen who is not a public official or employee. For example, if an application to appeal a matter must be accompanied by a fee, the public official must submit the necessary fee. The official may not pursue the matter through any channels other than those available to any other citizen. If, in order to address city council, a citizen must submit his name and a summary of his comments, and must wait in a queue of other citizens desiring to address council, a public official must comply with these requirements.

Therefore, R.C. 102.03 (D) does not prohibit a city council member who owns property in the city from appearing before city council, and advocating his individual views on a matter affecting his private property, in the same manner available to any other private citizen. See generally Advisory Opinion No. 90-013. The city council member in your question is not prohibited from appearing and offering testimony, in behalf of his own personal interests, before city council, or from making a statement before council, as a private citizen, in a matter which affects his personal property interests. However, a city council member is prohibited from using his official position or authority, in any way, formally or informally, with regard to a matter which affects his property interests, and from otherwise acting in a manner which is not available to any other private citizen. For example, a city council member is prohibited from discussing his property interests with a city employee or city official in a context or circumstance where his access to the employee or official is other than the access available to any other private citizen.

Further, a city council member is prohibited from misusing his official position or authority to secure a thing of value which would otherwise be proper but which is selective, differential, or in disproportion to the benefits provided to other landowners. See Advisory Opinions No. 92-010 and 92-013. The Ethics Commission has stated, for example, that R.C. 102.03 (D) would prohibit a village council member from misusing the authority or influence of his office to secure infrastructure improvements, even where the improvements are of benefit to the entire village or a large portion thereof, if the benefit to the council member's property is selective, differential, or in disproportion to the benefit provided to other property in the village. Therefore, R.C. 102.03 (D) prohibits a city council member from acting in any way to secure any benefit to his property, even if other properties in the city will be affected, if the benefits to the official's property are selective, differential, or disproportionate. Also, Division (E) of Section

102.03 prohibits the city council member from accepting or soliciting anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties, even if he has not used the authority or influence of his office to secure the thing of value. See Advisory Opinion No. 92-013. Therefore, R.C. 102.03 (E) prohibits a city council member from merely receiving benefits which are selective, differential, or in disproportion to the benefits provided to other property in the city, even if he abstains from voting or otherwise participating in council's decision to provide the improvements. Id.

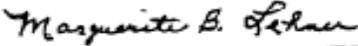
You should also note the requirement of R.C. 102.03 (B), which provides as follows:

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 which is confidential because of statutory provisions, or which has been clearly designated to him as confidential when such 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) prohibits a public official or employee from disclosing or using, without appropriate authorization, any confidential information acquired in the course of his official position. There is no time limitation on this prohibition, and the city council member is bound by this prohibition while he serves and after he leaves his public position, so long as the information is confidential. See Advisory Opinion 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 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 Revised Code prohibits 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 if the council action would have a specific beneficial or detrimental impact upon his personal, pecuniary interests; (2) Neither Division (D) of Section 102.03 of the Revised Code, nor any other provision of the Ethics Law, prohibits, per se, a city council member from appearing, as an individual, before council in order to protect his own private property interests, so long as he pursues a course of action that is available to any other citizen who is not a city council member; and (3) Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a city council member from accepting, soliciting, or using his authority and influence to secure any benefits which are selective, differential, or in disproportion to the benefits provided to other citizens or property owners.



Marguerite B. Lehner, Chair
Ohio Ethics Commission