



## OHIO ETHICS COMMISSION

150 EAST BROAD STREET

COLUMBUS 43215

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Advisory Opinion

No. 76-012

June 22, 1976

Syllabus by the Ohio Ethics Commission:

- 1) A city councilman is required by Section 102.02 (A)(3) of the Revised Code to disclose the name of the partnership in which he has an investment of more than one thousand dollars and give a description of the nature of his investment.
- 2) A city councilman who is a general partner in a partnership, which owns real property, is required by Section 102.02 (A)(4) of the Revised Code to disclose, on his financial disclosure statement, partnership property.

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Your request for an advisory opinion asks whether a city councilman must disclose on his financial disclosure statement real property owned by a partnership in which he is a general partner as well as his interest in the partnership. You explain that you are a city councilman and that you have an investment of over one thousand dollars in the partnership. You state that the partnership transacts business in Ohio and the real property owned by the partnership is located in Ohio.

A city councilman is required by Section 102.02 (A) of the Revised Code to file a financial disclosure statement:

"Every person who is elected to . . . a . . . city office . . . shall file with the appropriate ethics commission on a form prescribed by the commission, a statement disclosing: . . ."

Among the items to be disclosed on the financial disclosure statement are certain investments and various real estate holdings as required by Section 102.02 (A)(3) and (4) of the Revised Code:

"(3) The name of every corporation on file with the secretary of state which is incorporated in Ohio or holds a certificate of compliance authorizing it to do business in this state, trust, business trust, partnership, or association which transacts business in Ohio in which the person or any person for his use or benefit has an investment of over one thousand dollars at fair market value as of the date of the statement, or in which the person holds any office or has a fiduciary relationship, and a description of the nature of the investment, office or relationship. This division does not require disclosure of the name of any bank or building or loan association

with which the person has a deposit or a withdrawable share account;

- 4) All fee simple and leasehold interest to which the person holds legal title to or a beneficial interest in real property located within this state, excluding the person's residence and property used primarily for personal recreation; . . ." (Emphasis added.)

Thus, a city councilman who has an investment of over one thousand dollars in a partnership which transacts business in Ohio, is required to disclose, pursuant to Section 102.02 (A)(3) of the Revised Code, the name of the partnership and describe the nature of the investment.

The next issue, therefore, becomes whether real property held by the partnership, which is located within the state, can be considered real property to which the city councilman holds legal title or in which he has a "beneficial interest" for purposes of Section 102.02 (A)(4) of the Revised Code.

Section 1775.07 of the Revised Code defines partnership property:

"(A) All property originally brought into the partnership stock or subsequently acquired by purchase or otherwise, on account of the partnership, is partnership property.

(B) Unless the contrary intention appears, the property acquired with partnership funds is partnership property.

(C) Any estate in real property may be acquired in the partnership name. A conveyance to a partnership in the partnership name shall recite that the grantee is a partnership. Title so acquired can be conveyed only in the partnership name.

(D) A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears."

"Partnership property" is clearly distinguishable from property which is held individually by the partners. "Partnership property" may be the property either originally brought into the partnership or subsequently acquired by it. Partnership property subsequently acquired must be acquired with partnership funds, must have the partnership name as grantee, and partnership property can be conveyed only in the partnership name.

Section 102.02 (A)(4) of the Revised Code requires the disclosure of "[A]ll fee simple and leasehold interest to which the person holds legal title . . . ." (Emphasis added.) This requires disclosure of real property in which the

filer of the statement has legal title as an individual.

In the case of a partnership, real property acquired by the partnership is, pursuant to Section 1775.02 of the Revised Code, partnership property. Therefore, a person who is a member of the partnership cannot be said to have "legal title" in partnership property individually, since legal title is held by the partnership. Section 1775.24 (A) of the Revised Code describes a partner's interest in property held by a partnership: "(A) A partner is co-owner with his partners of specific partnership property holding as a tenant in partnership. . . ."

Thus, a general partner does not have individual legal title to partnership property.

The remaining issue is whether a general partner in a partnership has a "beneficial interest" in real property which is held by the partnership. The term "beneficial interest" is not defined within Chapter 102 of the Revised Code, nor is it defined elsewhere in the Code. In Advisory Opinion No. 76-008, the Ohio Ethics Commission held that the rules of statutory construction provide that in the absence of a statutory definition, words of a statute are given a plain, commonly understood meaning.

Black's Law Dictionary defines "beneficial interest" as "profit, benefit, or advantage resulting from a contract, or the ownership of an estate as distinct from the legal ownership for control."

Webster's New World Dictionary defines the term "beneficial" as "advantageous, favorable, or for one's own benefit" and the term "interest" as a "right or claim to something or a share or participation in something." The plain, commonly understood meaning of the term "beneficial interest" is an advantageous or favorable right or claim to something. A partner profits as the partnership profits since a partner has a right to share in the profits and surplus of the partnership as set out in Section 1775.25 of the Revised Code: "A partner's interest in the partnership is his share of the profits and surplus, and the same is personal property." In this sense, the person who is a general partner in a partnership which holds property could claim that he had advantageous or favorable right or claim to the property since he is a partner. Thus, although a person who is a partner in a partnership which holds title to real property does not, by virtue thereof, hold legal title to the property as an individual; he does have a beneficial interest, i.e., a favorable claim or share of that property through his partnership relationship.

Therefore, a partner has a "beneficial interest" in partnership property and as such he is required to disclose, pursuant to Section 102.02 (A)(4) of the Revised Code, the real property owned by the partnership.

Therefore, it is the opinion of the Ohio Ethics Commission and you are so advised that a city councilman is required by Section 102.02 (A)(3) of the

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Revised Code to disclose the name of the partnership in which he has an investment of more than one thousand dollars and give a description of the nature of his investment, and that a city councilman who is a general partner in a partnership, which owns real property, is required by Section 102.02 (A)(4) of the Revised Code to disclose, on his financial disclosure statement, partnership property.

  

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OHIO ETHICS COMMISSION

Merom Brachman, Chairman