



OHIO ETHICS COMMISSION

150 EAST BROAD STREET

COLUMBUS 43215

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Advisory Opinion

No.: 78-003

June 29, 1978

Syllabus by the Commission:

Division (A)(4) of Section 2921.42 of the Revised Code would prohibit a county commissioner from knowingly having an interest in the profits or benefits of a public contract for commercial development financed through industrial revenue bonds.

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In your request for an Ohio Ethics Commission Advisory Opinion, you asked whether the Ohio Ethics Law and other relevant statutes, particularly Section 2921.42 of the Revised Code, would prohibit a county commissioner from knowingly having an interest in the profits or benefits of a public contract for commercial development financed through the issuance of industrial revenue bonds under Chapter 165. of the Revised Code.

You state, by way of history, that a non-profit community improvement corporation established under Chapter 1724. of the Revised Code has been designated by both the county and the city to assist in the financing of industrial and commercial development in the area. Under the proposal, the county commissioners will authorize the issuance of industrial revenue bonds, under Chapter 165. of the Revised Code, for financing a proposed commercial development project on real estate that is presently owned or controlled by a company in which a county commissioner is a partner and which will be the developer and the principal beneficial owner of the project after completion. You state further that the proposed transactions will include, in substance: 1) a sale-lease agreement between the county and the commissioner's company, under which the land will be conveyed to the county; 2) the commissioner's company will construct the project on the land, using funds to be provided by the county from the proceeds of county-issued industrial revenue bonds; 3) the completed project will be leased to the commissioner's company on a "net-net" basis under which the commissioner's company will make payments sufficient to amortize the bonds over the term of the lease; and 4) the commissioner's company will have an option to purchase the property from the county for nominal consideration at the expiration of the lease. The transaction may also take the form of a loan agreement, under which the county is involved in a direct loan from the lender to the beneficiary, with or without a mortgage of the property in question. In each case, the county is a conduit through which the transaction flows between the lender and the beneficiary, and even though public funds are not involved in the transaction, the participation of the county is required under both state statutes and federal tax law. The county commissioner in question has made his relationship with the company a matter of public record. You requested information on the propriety of this project prior to the completion of the transaction.

Section 102.08 of the Revised Code authorizes the Ohio Ethics Commission to render advisory opinions interpreting Section 2921.42 as well as Chapter 102. of the Revised Code. Section 2921.42 of the Revised Code provides, in pertinent part:

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

. . . .

(4) Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which he is connected;"

Section 2921.42 of the Revised Code applies to any "public official," a term defined in Section 2921.01 of the Revised Code to include "any elected or appointed officer, or employee, or agent of the state or any political subdivision thereof . . . ." The term "public contract" is defined in Division (E)(1) of Section 2921.42 of the Revised Code to include "the purchase or acquisition, or a contract for the purchase or acquisition of property or services by or for the use of the state or any of its political subdivisions, or any agency or instrumentality of either." We conclude that a county commissioner is a "public official" and the transaction is a "public contract" for purposes of Section 2921.42 of the Revised Code.

Therefore, Division (A)(4) of Section 2921.42 of the Revised Code would prohibit a county commissioner from knowingly having an interest in the profits or benefits of a public contract entered into by the county, including the transaction in the instant case. In addition, the exemption of Division (B) and the exception of Division (C) of Section 2921.42 are not applicable in the instant case.

The conclusions of this advisory opinion are based on an examination of the facts and circumstances of the instant case as you have presented them. The Ohio Ethics Commission cautions that its advisory opinions may be relied upon only with respect to questions arising under Chapter 102. and Section 2921.42 of the Revised Code.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that Division (A)(4) of Section 2921.42 of the Revised Code would prohibit a county commissioner from having an interest in the profits or benefits of a public contract for commercial development financed through industrial revenue bonds.



Merom Brachman, Vice Chairman  
Ohio Ethics Commission