



OHIO ETHICS COMMISSION

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Advisory Opinion

No.: 78-004

August 4, 1978

Syllabus by the Commission:

- 1) For purposes of the Ohio Ethics Law and Section 2921.42 of the Revised Code, the term "public official" comprehends a corporation appointed to serve as city engineer and a member or employee of the firm designated to serve in that capacity.
- 2) Section 102.03 (D) of the Revised Code prohibits a city engineer from using or attempting to use his official position to secure anything of value for himself that would not ordinarily accrue to him in the performance of his duties, which thing is of such character as to manifest a substantial and improper influence upon him with respect to his duties.
- 3) Section 102.04 (C) of the Revised Code prohibits a city engineer from receiving or agreeing to receive compensation, directly or indirectly, other than from the city, for any service rendered or to be rendered by him personally in any matter before city council or any agency of the city, except the courts.
- 4) Section 2921.42 (A) (4) of the Revised Code prohibits a city engineer from knowingly having an interest in the profits or benefits of a contract for engineering services by or for the use of the city with which he serves.

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In your request for an Ohio Ethics Commission Advisory Opinion, you asked whether the Ohio Ethics Law would prohibit an engineering firm, which is under contract with the state as engineer on a highway underpass project, from serving as city engineer for the city which must approve the project.

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You state, by way of history, that the city in question recently hired an engineering firm, a corporation, as city engineer. The firm is also under contract with the State of Ohio as the engineer for a state highway underpass project in the city. A review of the contract between the city and the firm indicates that, as city engineer, the firm will be required to review the project and advise the mayor and city council, which must approve the project, and participate with the mayor in review meetings with the state's engineering consultant, which is the engineering firm. You asked whether the Ohio Ethics Law prohibits such an arrangement.

The engineering firm, a corporation, is a "person" appointed to an office of a municipal corporation, and, in its capacity as city engineer, is a "public official" subject to the prohibitions of the Ohio Ethics Law. [R.C. 1.59; 102.01 (B) and (C)] In addition, a member or employee of the engineering firm who serves as city engineer on behalf of the corporation is a "public official" for purposes of the Ohio Ethics Law (See: Ohio Ethics Commission Advisory Opinion No. 77-004). We conclude that the term "public official" comprehends a corporation appointed to serve as city engineer and a member or employee of the firm designated to serve in that capacity.

Section 102.03 (D) of the Revised Code provides:

"No public official or employee shall use or attempt to use his official position to secure anything of value for himself that would not ordinarily accrue to him in the performance of his official duties, which thing is of such character as to manifest a substantial and improper influence upon him with respect to his duties."

In the instant case, an engineering firm or its employee, serving as city engineer, would be in a position to use or attempt to use the position to obtain a benefit, in that the city engineer would be reviewing engineering work performed by the firm. Even though the facts as presented do not reveal any evidence of impropriety, the Commission believes that the potential for a violation of Section 102.03 (D) of the Revised Code clearly exists in the instant case.

Section 102.04 (C) of the Revised Code provides, in pertinent part:

"Except as provided in division (D) of this section, no person who is elected or appointed to an office of or employed by a county, township, municipal corporation, or any other governmental entity, . . . shall receive or agree to receive directly or indirectly compensation other than from the agency with which he serves for any service rendered or to be rendered by him personally in any case, proceeding, application,

or other matter which is before any agency, department, board, bureau, commission, or other instrumentality, excluding the courts, of the entity of which he is an officer or employee. . . ." (emphasis added)

In the instant case, the engineering firm, as city engineer, would be prohibited from receiving compensation from the state for services rendered on the highway underpass project, which is a matter before city council. In addition, an employee of the engineering firm serving as the city engineer would be prohibited from receiving compensation, through the state contract, for any service rendered personally on the highway project (See: Ohio Ethics Commission Advisory Opinion No. 75-006). We conclude, therefore, that Section 102.04 (C) of the Revised Code prohibits a city engineer from receiving or agreeing to receive compensation, directly or indirectly, other than from the city, for any service rendered or to be rendered by him in any matter before the city or any agency of the city, except the courts. The exemption of Section 102.04 (D) of the Revised Code does not apply in the instant case.

Section 2921.42 (A) (4) 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."

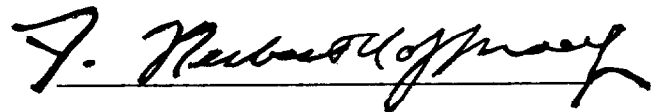
A city engineer, whether an individual or a corporation, is a "public official" for purposes of Section 2921.42 of the Revised Code [See: R.C. 2921.01 (A)] The term "public contract" is defined in Division (E) (1) of Section 2921.42 as "the purchase or acquisition, or a contract for the purchase or acquisition 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," which comprehends a contract for engineering services on a state highway project between the state and the engineering firm by or for the use of the municipal corporation with which the firm serves as city engineer. Therefore, Section 2921.42 (A) (4) prohibits a city engineer from knowingly having an interest in the profits or benefits of a contract for engineering services by or for the use of the city with which he serves. The exemption of Division (B) and the exception of Division (C) of Section 2921.42 are not available in the instant case, since the criteria for their application are not satisfied.

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We conclude that the Ohio Ethics Law and Section 2921.42 of the Revised Code prohibit an engineering firm, which is under contract with the state as an engineer on a state highway underpass project, from serving simultaneously as city engineer and in that capacity reviewing the work of the private engineering firm.

The conclusions of this advisory opinion are based on an examination of the facts and circumstances of the instant case as they have been presented to the Commission. The Ohio Ethics Commission cautions that its advisory opinions may be relied upon only with respect to questions arising under Chapter 102. or Section 2921.42 of the Revised Code, and do not address possible violations of other laws or rules.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that: 1) for purposes of the Ohio Ethics Law and Section 2921.42 of the Revised Code, the term "public official" comprehends a corporation appointed to serve as city engineer and a member or employee of the firm designated to serve in that capacity; 2) Section 102.03 (D) of the Revised Code prohibits a city engineer from using or attempting to use his official position to secure anything of value for himself that would not ordinarily accrue to him in the performance of his duties, which thing is of such character as to manifest a substantial and improper influence upon him with respect to his duties; 3) Section 102.04 (C) of the Revised Code prohibits a city engineer from receiving or agreeing to receive compensation, directly or indirectly, other than from the city, for any service rendered or to be rendered by him personally in any matter before city council or any agency of the city, except the courts; and 4) Section 2921.42 (A) (4) of the Revised Code prohibits a city engineer from knowingly having an interest in the profits or benefits of a contract for engineering services by or for the use of the city with which he serves.



F. Herbert Hoffman, Jr., Chairman
The Ohio Ethics Commission