



OHIO ETHICS COMMISSION

150 EAST BROAD STREET
COLUMBUS 43215
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Advisory Opinion
No. 79-007
October 19, 1979

Syllabus by the Commission:

- 1) Division (A) of Section 102.03 of the Revised Code prohibits a city council member, who is an engineer and surveyor, from representing a private client or acting in a representative capacity for any person on any matter with which he is directly concerned and in which he personally participates by a substantial and material exercise of administrative discretion in his capacity as a city council member, including a zoning change or variance.
- 2) Division (D) of Section 102.03 of the Revised Code prohibits a city council member from voting to approve plats and plans which he has drafted, for compensation, in his capacity as a private engineer and surveyor;
- 3) Division (C) of Section 102.04 of the Revised Code prohibits a city council member from receiving compensation for engineering services rendered by him personally for a private client on a matter which is before the city council or any agency of the city.

In your request for an Ohio Ethics Commission Advisory Opinion, you asked whether the Ohio Ethics Law: 1) would prohibit a member of city council from performing private engineering services in matters before the city council or other agencies of the city; and 2) would prohibit a member of city council from voting to approve plans and plats which he has drafted in his capacity as a private engineer.

You stated, by way of history, that the city council has a variety of powers over planning, platting, and zoning in the city, including the power to appoint various boards and commissions and city staff personnel. A council member is engaged in the private practice of engineering and surveying, and in such capacity prepares construction plans and plats for new subdivisions and for rezoning land within the city limits, to be submitted to various boards, commissions, and employees of the city, including city council.

Division (A) of Section 102.03 of the Revised Code provides, in pertinent part:

No public official or employee shall represent a client or act in a representative capacity for any person before the public agency by which he is or within the preceding twelve months was employed or on which he serves or within the preceding twelve months had served on any matter with which the person is or was directly concerned and in which he personally participated during his employment or service by a substantial and material exercise of administrative discretion.

The pertinent elements of Division (A) of Section 102.03 of the Revised Code are: 1) a public official; 2) is prohibited from representing a client or acting in a representative capacity for any "person" (defined in Section 1.59 of the Revised Code to include any individual, corporation, partnership, association, or other similar entity); 3) before the public agency with which he serves; 4) on any matter with which he is directly concerned and in which he personally participates by a substantial and material exercise of administrative discretion. This prohibition remains in effect for twelve months after a public official or employee leaves office.

In the instant case, Division (A) of Section 102.03 of the Revised Code would prohibit a member of a city council, a "public official" for purposes of the Ohio Ethics Law, from representing a client or acting in a representative capacity for any person, including a private client or the engineering firm with which he serves, on any matter before the city with which he is directly concerned and in which he personally participates by a substantial and material exercise of administrative discretion in his capacity as a city council member, including a zoning change or variance.

Division (D) of Section 102.03 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.

The pertinent elements of Division (D) of Section 102.03 of the Revised Code are: 1) a public official; 2) is prohibited from using or attempting to use his official position; 3) to secure anything of value for himself; 4) the thing of value must be

something that would not ordinarily accrue to him in the performance of his official duties; and 5) the thing of value must be of such character as to manifest a substantial and improper influence upon him with respect to his duties. Violations of Division (D) of Section 102.03 of the Revised Code depend upon the specific facts and circumstances of a particular case, and it is difficult to identify potential violations without access to all of the facts of the situation. However, if a member of city council voted to approve plans which he has drafted in his capacity as a private engineer and surveyor, for compensation, he could be in violation of this provision. On the other hand, if the member of city council withdraws from the discussions and abstains from voting on such matters, he could avoid the application of this prohibition.

Division (C) of Section 102.04 of the Revised Code provides:

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, excluding the courts, 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.

The pertinent elements of Division (C) of Section 102.04 of the Revised Code are: 1) a person elected to an office of a municipal corporation; 2) is prohibited from receiving or agreeing to receive compensation, directly or indirectly, except from the city with which he serves; 3) for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter that is before any agency of the city with which he serves. This provision would prohibit a member of city council 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, including his services as a professional engineer and surveyor, in any matter, including zoning changes or the approval of plats or plans, which is before the city council or any other agency or department of the city. The exemption of Division (D) of Section 102.04 of the Revised Code is not applicable in the instant case.

The conclusions of this advisory opinion are based on an examination of the facts presented. The Ohio Ethics Commission cautions that its advisory opinions may be relied upon only with

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respect to questions arising under Chapter 102. and 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) Division (A) of Section 102.03 of the Revised Code prohibits a city council member, who is an engineer and surveyor, from representing a private client or acting in a representative capacity for any person on any matter with which he is directly concerned and in which he personally participates by a substantial and material exercise of administrative discretion in his capacity as a city council member, including a zoning change or variance; 2) Division (D) of Section 102.03 of the Revised Code prohibits a city council member from voting to approve plats and plans which he has drafted, for compensation, in his capacity as a private engineer and surveyor; 3) Division (C) of Section 102.04 of the Revised Code prohibits a city council member from receiving compensation for engineering services rendered by him personally for a private client on a matter which is before the city council or any agency of the city.

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