



OHIO ETHICS COMMISSION

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COLUMBUS 43215
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Advisory Opinion
No.: 79-009
November 30, 1979

Syllabus by the Commission:

- 1) The Ohio Ethics Law and Section 2921.42 of the Revised Code do not, per se, prohibit an employee of the Division of Parks and Recreation of the Department of Natural Resources from bidding on a concessions contract with the Division, provided that: a) he is not involved in the issuance of the contract; b) he does not use his position to secure approval of the contract; and c) the contract procedure is in accordance with Section 1501.091 of the Revised Code.
- 2) The Ohio Ethics Law and Section 2921.42 of the Revised Code do not, per se, prohibit an employee of the Division of Parks and Recreation of the Department of Natural Resources from resigning and then contracting with the Division.

In your request for an Ohio Ethics Commission Advisory Opinion, you asked whether the Ohio Ethics Law and related statutes would prohibit an employee of the Division of Parks and Recreation of the Department of Natural Resources from bidding on or accepting a concessions contract with that Division.

You stated, by way of history, that the Division of Parks and Recreation of the Department of Natural Resources is responsible for the operation of Ohio's state park system. The contract in question involves the operation of the club house and certain aspects of the golf course at one of the state parks. The concessionaire would have full responsibility for the operation of the club house, including the food, the sale of merchandise at the pro shop, the rental of golf equipment and carts, and a program of golf instruction. In addition, the concessionaire would collect all greens fees. However, the concessionaire would not be responsible for the maintenance of the golf course, since state golf courses are maintained by employees of the Division of Parks and Recreation.

The person in question is presently employed by the Division of Parks and Recreation as a golf course superintendent at another state park. As such, he is responsible for the maintenance of the

golf course, but has no involvement in the club house concession. He has indicated his intention to resign his employment if he is awarded the contract. Contracts made pursuant to Section 1501.091 of the Revised Code are awarded by the Director of the Department of Natural Resources, after consideration of the recommendations of the Chief of the Division of Parks and Recreation. You stated that the person in question would have no involvement in the issuance of the contract.

In general, Section 2921.42 of the Revised Code prohibits a public official from knowingly having an interest in a public contract with the governmental entity with which he serves, and from using his official authority or influence to secure approval of a public contract in which he, a family member, or a business associate has an interest. In the instant case, an employee of the Division of Parks and Recreation of the Department of Natural Resources is a "public official," and the concessions contract is a "public contract," for purposes of Section 2921.42. Division (A)(1) of Section 2921.42 of the Revised Code prohibits a public official from knowingly authorizing, voting, or using the authority or influence of his office to secure approval of a public contract in which he, a member of his family, or any of his business associates has an interest. You stated that the public employee in question is not involved in the issuance of the concessions contract; thus, Division (A)(1) of Section 2921.42 would not apply.

Division (A)(4) of Section 2921.42 of the Revised Code prohibits a public official from knowingly having any interest in the profits or benefits of a public contract entered into by or for the use of the governmental entity with which he serves. In the instant case, if the public employee resigns his position before the contract is executed, the prohibition would not be applicable. It is important to note that Section 2921.42 of the Revised Code does not prohibit a public employee from merely bidding on a contract with the entity with which he serves, unless he is involved in the issuance of the contract.

Your attention is directed to Division (A) of Section 102.03 of the Revised Code, which prohibits a public official or employee 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) before the public agency with which he serves on any matter with which he is directly concerned and in which he personally participates by a substantial and material exercise of administrative discretion. The prohibition remains in effect for twelve months after the public official or employee leaves office. In the instant case, the contract does not involve matters with which the public employee is directly concerned or in which he personally participates by a substantial and material exercise of administrative discretion in his present capacity,

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since he does not participate in the awarding of concessions contracts by the Division. Thus, Division (A) of Section 102.03 of the Revised Code is not applicable under the facts you have presented. In addition, your attention is directed to Division (D) of Section 102.03 of the Revised Code, which prohibits a public official or employee from using or attempting to use his official position for personal gain. You stated that the public employee in question is not in a position to secure approval of the contract.

We conclude, therefore, that under the facts you have presented, neither the Ohio Ethics Law, Chapter 102. of the Revised Code, nor Section 2921.42 of the Revised Code would prohibit an employee of the Division of Parks and Recreation of the Department of Natural Resources from entering a bid on a concessions contract with that Division. In addition, if the public employee were successful in the bidding process, neither the Ohio Ethics Law nor Section 2921.42 of the Revised Code would prohibit him from resigning and then contracting with the Division of Parks and Recreation for the concessions contract at a state golf course operated by the Division.

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 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) the Ohio Ethics Law and Section 2921.42 of the Revised Code do not, per se, prohibit an employee of the Division of Parks and Recreation of the Department of Natural Resources from bidding on a concessions contract with the Division, provided that: a) he is not involved in the issuance of the contract; b) he does not use his position to secure approval of the contract; and c) the contract procedure is in accordance with Section 1501.091 of the Revised Code; and 2) the Ohio Ethics Law and Section 2921.42 of the Revised Code do not, per se, prohibit an employee of the Division of Parks and Recreation of the Department of Natural Resources from resigning and then contracting with the Division.

Mary K. Lazarus
Mary K. Lazarus, Chairperson