



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
8 EAST LONG STREET, SUITE 1200
COLUMBUS, OHIO 43215-2940
(614) 466-7090

October 18, 1989

Informal Opinion 1989-INF-1018

Robert M. Moore
Muehlhauser & Moore

Dear Mr. Moore:

You have asked whether the Ohio Ethics Law and related statutes would prohibit George Mylander, a member of the Sandusky City Commission, from voting or otherwise participating in the Commission's decision to relocate the Sandusky City Hall. You have stated that Mr. Mylander owns commercial property across the street from the proposed site for the new City Hall which will include a public parking garage. You have also indicated that the relocation of City Hall and the construction of the parking garage in conjunction with the relocation will directly affect the value of Mr. Mylander's property. It is my understanding that the relocation of City Hall is part of a plan to redevelop downtown Sandusky; such redevelopment is intended to benefit the downtown area and, at least indirectly, all Sandusky residents.

Division (D) of Section 102.03 of the Revised Code reads as follows:

No public official or employee shall use or authorize the use of the authority or influence of his office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties.

A "public official or employee" is defined for purposes of R.C. 102.03 to include any person who is elected or appointed to an office of a city, and thus includes a member of a city commission. See R.C. 102.01(B) and (C). A member of the Sandusky City Commission is, therefore, subject to the prohibitions of R.C. 102.03(D). See Ohio Ethics Commission Advisory Opinion No. 88-005.

In Advisory Opinion No. 88-004, the Ethics Commission discussed the application of R.C. 102.03(D) to the ability of a city council member to participate in matters which would affect property he owned as well as other property in the same area. The opinion first noted that the term "anything of value," as used in R.C. 102.03(D), includes any definite, pecuniary benefit to a person. More specifically, an increase or enhancement in the value of property, an opportunity or ability to sell property, or other benefit to property is considered to be a thing of value. The opinion concluded that "a city council member may participate or vote on general legislation which provides a uniform benefit to all citizens within the city, or a large portion thereof, but may not participate in matters which provide a particular and definite pecuniary benefit to property in which he . . . [has] an interest," citing the example that a council member may participate in enacting a general zoning code, but may not participate in the consideration of a zoning change or variance affecting property in which he has an interest. Advisory Opinion No.

Robert M. Moore
October 18, 1989
Page 2

88-004 clarifies that "the mere fact that the property of persons other than the council member will benefit from council action does not necessarily mean that, under specific circumstances, he would not receive a definite and particular benefit from the action so as to be prohibited from participating." Reference is made in Advisory Opinion No. 88-004 to Advisory Opinion No. 80-007, which held that R.C. 102.03(D) prohibited city council members from participating in discussions or voting on matters regarding a downtown revitalization project which would benefit their property. Advisory Opinion No. 88-004 goes on to set forth the standard in such matters as being "whether the matter before council would provide such a definite a particular benefit for the council member that his private interest could impair his independence of judgment or unbiased discretion in making his official decisions," and notes that the application of R.C. 102.03(D) is a factual determination, which is dependent upon the circumstances of each particular case. The opinion also notes that an official should refrain from participating in matters where an affirmative decision would decrease the value of his property, or have some other direct, detrimental effect on his private interests, as well as in matters which would benefit his property, since his independence of judgment could be impaired in either situation.

Applying Advisory Opinions No. 80-007 and 88-004 to the instant facts, it must be concluded that R.C. 102.03(D) prohibits Mr. Mylander from discussing, deliberating, voting or otherwise participating, formally or informally, in the City Commission's decision to relocate City Hall and construct a parking garage, since such developments would increase the value of Mr. Mylander's downtown property. Although the downtown development is intended to benefit generally all of the citizens of Sandusky, Mr. Mylander would, as an owner of property located downtown, derive a particular and definite benefit from the development, beyond that generally enjoyed by all citizens. See Advisory Opinions No. 85-006 and 88-004. Because the value of Mr. Mylander's property could be enhanced by the relocation project, he must refrain from participating in the City Commission's consideration and decision regarding the project.

This informal advisory opinion was approved by the Ohio Ethics Commission at its meeting on October 18, 1989. The opinion is based on the facts presented and is limited to questions arising under Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code. If you have any questions, please contact me.

Sincerely,



Melissa A. Warheit
Executive Director

MW/pg