



OHIO ETHICS COMMISSION

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

April 11, 1990

Informal Opinion 1990-INF-0411

George M. Muehlhauser, III
Robert M. Moore

Dear Mr. Muehlhauser and Mr. Moore:

This letter is in response to your letter of February 27, 1990 asking the Ethics Commission to issue a new opinion concerning the ability of George Mylander, Sandusky City Commissioner, to participate in the City Commission's consideration of the relocation of Sandusky City Hall.

You have stated in your letter of February 27, 1990 that:

"This matter, in one form or another, has been before the Ethics Commission for several months without resolution. . . It is fair to conclude that when the legislature passed Chapter 102 of the Ohio Revised Code, thus establishing the Ohio Ethics Commission, it did not intend the rulings by the Commission concerning executory acts of public officials would be deferred to the point that the contemplated acts of those public officials would thus become moot and no longer have any significance."

In light of these comments, it may be useful to clarify the series of events that has thus far transpired.

In a letter dated October 6, 1989, Robert Moore submitted an opinion request to the Ethics Commission asking 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 City Commission's decision to relocate the Sandusky City Hall. Mr. Moore stated in his letter that Mr. Mylander owned commercial property across the street from the proposed site for the new City Hall, and that the relocation of City Hall with attendant improvements would directly affect the value of Mr. Mylander's property. The Ethics Commission received Mr. Moore's letter on October 11, 1989. The Ethics Commission met at a regularly scheduled meeting on October 18, 1989, and approved the issuance of an informal advisory opinion holding that Mr. Mylander was prohibited by R.C. 102.03(D) from participating in the City Commission's decision to relocate City Hall, since such development would increase the value of property which was owned by Mr. Mylander and located in close proximity to the proposed new location of City Hall.

In a letter dated January 12, 1990, Mr. Moore submitted a second opinion request asking whether Mr. Mylander could participate in the City Commission's consideration of the downtown project if he irrevocably transferred his commercial property to the Mylander Foundation. This letter was received by the Ethics Commission on January 16, 1990. In an effort to accommodate the request that a response be expedited, the staff discussed the matter with the Commission at its next meeting on January 18th, and received direction as to how the opinion should be drafted. On January 29th, an informal opinion was issued to Mr. Moore in accordance with the Commission's discussion, advising

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that Mr. Mylander would still be prohibited from participating in the City Commission's consideration of the relocation even if he transferred his property to the Foundation because of his relationship to the Foundation. Mr. Mylander is the settlor of the Foundation, and serves on the committee which decides how a portion of the trust's income is to be distributed.

In a letter dated January 26, 1990 you asked that the opinion addressing the proposed transfer of property to the Foundation be reconsidered at its February meeting, and that Mr. Mylander, Mr. Moore, and/or you be permitted to appear before the Commission to explain the relationship between Mr. Mylander and the Foundation. Your request that the Commission reconsider its informal opinion issued on January 29, 1990 was reiterated in a letter dated February 14, 1990 and received by the Commission on February 15, 1990.

The Ethics Commission next met on February 22, 1990. Mr. Moore and Mr. Mylander appeared at this meeting. Rather than explaining the relationship between Mr. Mylander and the Foundation, however, Mr. Moore and Mr. Mylander focused their presentations on the events that had transpired since the issuance of the opinion of January 29th. It was explained that Mr. Mylander had in fact transferred his property to the Foundation and that the Foundation had subsequently sold the property to a third party. It was also explained that the City Commission had repealed the ordinances and resolution providing for the relocation of City Hall. Documents describing portions of these facts were given to the Commission. The information presented at the meeting to the Commission was substantially different than the information described in previous opinion requests. There was no written opinion request pending at that time which set forth the most recent facts.

The Commission decided at its meeting on February 22nd to deny the request for reconsideration of the January 29th opinion. However, the Commission decided to offer Mr. Mylander the opportunity to submit a third opinion request since the facts had substantially changed since the January 29th opinion had been issued and a third party now owned the property. The Executive Director informed you of the Commission's decision by telephone on the afternoon of February 22nd, and confirmed the information by letter of February 23rd. Your third opinion request was submitted by letter of February 27, 1990 and received by the Commission on March 1, 1990.

As you may be able to discern from the foregoing recitation, the reason that "this matter, in one form or another, has been before the Ethics Commission for several months without resolution" is because you have continued to submit opinion requests with constantly changing facts, and not because the Commission has failed to act. As you will note, the Commission has consistently considered your opinion requests at the meeting immediately following receipt of the opinion request, and has made every effort to be responsive to your concerns. You have, however, indicated your dissatisfaction with the Commission's opinions, and have submitted three different opinion requests with changing facts, seeking a favorable response. The Commission has acted expeditiously and properly with respect to each of those requests.

In your third opinion request dated February 27, 1990, you have asked the Commission "to reconsider its informal advisory opinion issued on January 29, 1990." As the Executive Director informed you by telephone on February 22nd and by letter of February 23rd, the Commission voted at its meeting on February 22nd to deny Mr. Mylander's request for reconsideration of the January 29th opinion. However, the Commission will deem your letter of February 27th to ask whether Mr. Mylander may participate in the City Commission's discussions and vote to relocate City Hall in light of

the fact that Mr. Mylander transferred his property to the Mylander Foundation and that the Mylander Foundation subsequently sold the property to a third party.

You have stated the following facts in your February 27th letter. On January 29, 1990 the City Commission repealed the resolution and ordinances providing for the relocation of City Hall. On February 9, 1990 Mr. Mylander conveyed by warranty deed his downtown property to Society National Bank as Trustee of the Mylander Foundation. The warranty deed was without reservation. On February 15, 1990, a purchase agreement was signed by Society National Bank as Trustee of the Mylander Foundation, with Weber's, Inc., whereby Society National Bank agreed to sell the property in question to Weber's, Inc. Your letter states: "You will note that there is no provision whatsoever in the purchase agreement with regard to Mr. Mylander or Society National Bank having the right to repurchase the property under any circumstances, nor was there any agreement, oral or written, between Mr. Mylander and Society National Bank, or between Society National Bank and Weber's, Inc., or between Mr. Mylander and Weber's, Inc., concerning any possibility of the right of Mr. Mylander or Society National Bank having the right to repurchase."

Your letter further indicates that on February 16, 1990, Society National Bank as Trustee executed a fiduciary deed conveying the property to Weber's, Inc. and the deed was filed for record in the county recorder's office by the escrow agent on February 20, 1990. It is the understanding of the Commission that Mr. Mylander is on the Board of Directors of the bank that holds the mortgage on the property, and is a shareholder in the bank. You have stated, however, that he is not on the Committee which makes loan recommendations, and abstained from the Board's ratification of the Committee's recommendation to grant a loan to Weber's Inc. You have also indicated that Mr. Mylander did not otherwise use his official authority or influence, formally or informally, to secure the loan for Weber's Inc.

As discussed in previous opinions, Division (D) of Section 102.03 of the Revised Code prohibits a public official from using the authority or influence of his office to secure anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties. Mr. Mylander previously owned downtown property, the value of which would have been increased by the relocation of City Hall. R.C. 102.03(D) would have prohibited Mr. Mylander from participating as a City Commissioner in the Commission's consideration of, and vote upon, the relocation. Mr. Mylander transferred his property to the Mylander Foundation, which then sold the property to Weber's, Inc, which owns property adjacent to the property in question. Mr. Moore stated at the meeting on February 22, 1990 that neither Mr. Mylander nor the Foundation has any relationship with Weber's, Inc., or Dennis Hahn, Weber's President, and that they are not business associates. He also stated that neither Mr. Mylander nor the Foundation had an option to repurchase the property and that there was no financing agreement between Weber's and Mr. Mylander or the Foundation. You have indicated that neither Mr. Mylander nor any person or organization with whom he is related owns the downtown property which would be affected by the relocation of City Hall.

Therefore, R.C. 102.03(D) would not prohibit Mr. Mylander from participating in the City Commission's deliberations or vote to relocate City Hall on the basis that the value of the property which he previously owned would be affected by the relocation. This conclusion is specifically conditioned upon the assertions or implications made to the Ethics Commission that: (1) neither Mr. Mylander nor the Mylander Foundation has a business association or other relationship with Weber's, Inc. or any of its officers; (2) there is no financing agreement between Mr. Mylander or the Mylander Foundation and Weber's, Inc. and neither Mr Mylander nor the Foundation assisted in financing the sale;

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(3) neither Mr. Mylander nor the Mylander Foundation has an option to repurchase the property and there is no understanding among the parties that the property will be repurchased by Mr. Mylander or the Foundation; (4) Mr. Mylander did not use his official position as a City Commissioner with respect to the purchaser, the lending institution, or otherwise, in order to secure the purchase from the Foundation; and (5) the sale of the property by the Mylander Foundation to Weber's, Inc. was in all respects an arms-length transaction. Furthermore, you have indicated that the resolution and ordinances providing for the relocation of City Hall were repealed, and the conclusion that Mr. Mylander may now participate is specifically conditioned on the assumption that any resolutions or ordinances which are reintroduced to move City Hall would be substantially similar to the legislation that was repealed, so that the new legislation would not otherwise affect the interest of Mr. Mylander, his business associates, family members, or any other party with whom he has a relationship.

This response was approved by the Ethics Commission at its meeting on April 11, 1990. It is based on the facts presented by you in writing, and is rendered with regard to issues arising under Chapter 102. and Sections 2921.43 of the Revised Code. If you have any questions, please contact me.

Sincerely,

Melissa A. Warheit JR.

Melissa A. Warheit
Executive Director

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