



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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COLUMBUS, OHIO 43215-2940
(614) 466-7090

October 11, 1991

Informal Opinion 1991-INF-1011-2

Harold S. Stern
Gaines & Stern Co., L.P.A.

Dear Mr. Stern:

You have asked for an application of the Ohio Ethics Law and related statutes to the business conducted by Zone Travel Incorporated. You have explained that the Attorney General's wife is president and principal shareholder in Zone Travel Incorporated, which is located in Cleveland. You have stated that Zone Travel is a family business with which she has been connected for seventeen years, and that the Attorney General has no involvement with the business. You have specified that the Attorney General holds no financial or fiduciary interest in the company, and exercises no management responsibilities with the company.

You have indicated that, among Zone Travel's clients, are a number of attorneys and law firms in the Cleveland area, and that it is likely that some of those lawyers have been doing, or will be hired to do, special counsel work for the Attorney General's Office. You have clarified that Zone Travel will not do any work for the Attorney General's Office directly, and that Zone Travel intends to contact existing clients who are attorneys and request that they not use the agency for arrangements that involve their work as special counsel.

Division (A)(1) of Section 2921.42 of the Revised Code reads as follows:

- (A) No public official shall knowingly do any of the following:
 - (1) Authorize, or employ the authority or influence of his office to secure authorization of any public contract in which he, a member of his family, or any of his business associates has an interest;

The term "public official" is defined for purposes of Section 2921.42 in Section 2921.01(A) to include any elected officer of the

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State. The Attorney General is, therefore, subject to the prohibitions of Section 2921.42. See Ohio Constitution art. III, § 1; R.C. 109.01.

The term "public contract" is defined for purposes of Section 2921.42 in Division (E) of that Section to include the purchase or acquisition, or a contract for the purchase or acquisition, of goods or services by or for the use of the State. Therefore, the purchase or acquisition of travel services, or a contract for the purchase or acquisition of travel services, by the State would constitute a "public contract" for purposes of Section 2921.42.

Division (A)(1) of Section 2921.42 prohibits a public official from authorizing, or using the authority or influence of his position to secure authorization of, any public contract in which a member of his family has an interest. A member of a public official's family includes the public official's spouse. See Advisory Opinions No. 80-001 and 85-015. An "interest" in a public contract must, for purposes of Section 2921.42, be definite and direct, and may be pecuniary or fiduciary in nature. See Advisory Opinions No. 81-003 and 81-008. The Attorney General's wife, who is president and principal shareholder in Zone Travel, would have an "interest" in the business of Zone Travel for purposes of Section 2921.42. See Ethics Commission Advisory Opinion No. 86-002. The Attorney General would, therefore, be prohibited by Division (A)(1) of Section 2921.42 from authorizing, or using the authority or influence of his position to secure authorization of, the purchase or acquisition of services from Zone Travel by the Attorney General's Office. Because the Attorney General is the chief administrative officer and appointing authority of the Attorney General's Office, see, e.g., R.C. 109.05, and is empowered to exercise authority or influence over all business transacted by the Attorney General's Office, it is apparent that any use of Zone Travel by the Attorney General's Office would raise the issue whether the Attorney General had used his authority or influence to secure the business for Zone Travel. Therefore, in addition to the clear dictate of Division (A)(1) of Section 2921.42, the Attorney General's Office should also refrain from conducting business with Zone Travel.

Furthermore, the Attorney General serves as the chief law officer of the state and all of its departments; no state officer, board, or head of a department or institution of the state shall employ, or be represented by, other counsel or attorneys. R.C. 109.02. The Attorney General is empowered to give legal advice to state officers, boards, commissions, and other officials, R.C. 109.12, and to prepare forms of contracts, obligations, and other instruments of writing for the use of state officers, R.C. 109.15. The Attorney General is also required to represent

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and defend state officers and employees in any civil action instituted against them. R.C. 109.361. It is apparent that the Attorney General, by virtue of his position as legal counsel and advisor, is in a position to exercise influence over the officers and employees of all other state departments, agencies, boards, and commissions and the business conducted thereby. He is prohibited from using that influence to secure the use of his wife's travel agency by other state departments, offices, and agencies or by other entities he is required to represent. See, e.g., (R.C. 3354.02 and 3354.03, 3357.02 and 3357.04, 3358.01 and 3358.02--the Attorney General is the attorney for community colleges, technical colleges, and state community colleges, even though they are deemed to be political subdivisions of the state.)

You have specifically asked about special counsel. R.C. 109.07 states that the Attorney General "may appoint special counsel to represent the state in civil actions, criminal prosecutions, or other proceedings in which the state is a party or directly interested." See also R.C. 109.361. Special counsel hired under Section 109.07 are paid from funds appropriated by the General Assembly for that purpose. Section 109.08 provides that the Attorney General "may appoint special counsel to represent the state in connection with all claims of whatsoever nature which are certified to the attorney general for collection under any law or which the attorney general is authorized to collect." Special counsel hired under Section 109.08 are paid from funds collected by them in an amount approved by the Attorney General.

It is clear that special counsel appointments which are awarded pursuant to Sections 109.07 and 109.08 are authorized by the Attorney General and that it is the Attorney General who has the statutory authority to enter into special counsel contracts or agreements. An agreement entered into by the Attorney General and an attorney or a private law firm for the provision of legal services constitutes a "public contract" for purposes of Section 2921.42, since it is the purchase or acquisition, or a contract for the purchase or acquisition, of services by and for the use of the State. If Zone Travel were retained by a firm or attorney in connection with, or to help perform, work required under a special counsel agreement, then the Attorney General's wife would financially benefit from the special counsel contract authorized by the Attorney General. See Advisory Opinion No. 86-002. The Attorney General would have authorized a public contract in which his wife had an interest, in violation of Section 2921.42 (A)(1). Therefore, Zone Travel may not provide travel services to an attorney or law firm in connection with, or to advance, work performed under a special counsel agreement or contract.

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The Attorney General is also subject to Divisions (D) and (E) of Section 102.03 of the Revised Code, which read as follows:

- (D) 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 character as to manifest a substantial and improper influence upon him with respect to his duties.
- (E) No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties.

The term "public official or employee" is defined for purposes of R.C. 102.03 in R.C. 102.01 (B) and (C) to include any elected officer of the State. Therefore, the Attorney General is subject to the prohibitions of R.C. 102.03.

The term "anything of value" is defined for purposes of R.C. 102.03 to include money, and every other thing of value. See R.C. 1.03 and 102.01 (G). Therefore, any compensation or financial benefit received by Zone Travel would constitute "anything of value" for purposes of R.C. 102.03. See Advisory Opinions No. 86-002 and 90-003.

The Ethics Commission has held that R.C. 102.03 prohibits a public official from soliciting or using his position to secure anything of value for a member of his family, including his spouse. See Advisory Opinions No. 89-008 and 90-004. Section 102.03, as well as R.C. 2921.42 (A)(1), would prohibit the Attorney General from soliciting, or using his authority or influence to secure, business for Zone Travel from his own office and from other public agencies for which he serves as legal advisor.

R.C. 102.03 (D) and (E) would also prohibit the Attorney General from soliciting, or using his position to secure, business for Zone Travel from attorneys and law firms which serve as special counsel, or wish to serve as special counsel, regardless of whether the attorneys or law firms would use the travel agency in connection with their special counsel work. The Ethics Commission has held that R.C. 102.03(D) and (E) prohibit a public official from soliciting, or using his position to secure, anything of value from any party that is regulated by, doing business or seeking to do business with, or interested in matters before, his agency. See

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Advisory Opinions No. 86-011, 89-008, and 89-010. A public official is prohibited from soliciting, or using his position to secure, anything of value, for himself or for a member of his family, from any of these parties or "prohibited sources." In this instance, attorneys and law firms who serve as special counsel or who are interested in serving as special counsel are parties who are doing business or seeking to do business with, and are interested in matters before, the Attorney General's Office. Therefore, the Attorney General is prohibited from soliciting, or using his position to secure, business for Zone Travel from any attorney or law firm which is special counsel to the Attorney General's Office, or seeking to become special counsel.

R.C. 2921.42 and R.C. 102.03 (D) and (E) apply only to public officials and employees. The family members of public officials are not subject to the prohibitions contained therein. However, it could cause an appearance of impropriety for the spouse of the Attorney General of the State of Ohio or Zone Travel to solicit or accept business from attorneys or firms who are special counsel for the Attorney General or are seeking to become special counsel. Such business could cause the appearance that the Attorney General affords preferential treatment to attorneys or firms which do business with Zone Travel or that the award of special counsel work is dependent upon or related to the attorney's or firm's use of Zone Travel.

This informal advisory opinion was approved by the Ethics Commission at its meeting on October 11, 1991. 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 and does not purport to interpret other laws or rules. Please feel free to contact me if you have any questions.

Sincerely,



Melissa A. Warheit
Executive Director