



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

October 21, 1993 Informal Opinion 1993-INF-1021-2

Nicholas J. Vehr
Cincinnati City Council

Dear Mr. Vehr:

In your letter to the Ethics Commission you ask whether the Ohio Ethics Law and related statutes prohibit you from participating on a matter pending before city council which may affect the financial interests of a client of your employer and/or a competitor of your employer's client.

You state that you are a member of city council for the City of Cincinnati (City) and are employed by a marketing, advertising, and public relations firm. You state that you, and all of your employer's professional employees, are salaried and thus, benefit from the revenue generated by work performed for any one client. You also state that a department store with a location in the downtown area of the City is a client of your employer. You further state that your duties with your employer do not include working on this department store's account.

You state that an advisory panel recommended that the City assist a department store chain construct a new store on a downtown site as a means of fostering downtown development. This department store chain is a competitor of your employer's client. You further state that the advisory panel also recommended that the City take steps to strengthen other downtown retailers, including the department store which is your employer's client.

You state that after the advisory panel made its recommendations, your employer's client expressed an interest in also constructing a new store on the downtown site. You state that your employer's client maintains that the receipt of City aid to its competitor in developing a store on this site would economically disadvantage their downtown operation. You also state that both department stores claim that the continuation of their downtown retailing operations may depend upon the City providing them aid in constructing a new store on the downtown site.

Your question whether you are prohibited from participating on matters before city council which may affect the financial interests of a client of your employer or a competitor of your

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employer's client implicates the prohibition imposed by R.C. 102.03 (D), which reads:

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 member of a city council is a public official for purposes of R.C. 102.03 (D). See Ohio Ethics Commission Advisory Ops. No. 86-002, 88-004, 89-008, and 90-004.

The term "anything of value" is defined for purposes of R.C. 102.03 in R.C. 1.03 to include money and every other thing of value. See R.C. 102.03 (G). A definite and direct pecuniary benefit is considered to be a thing of value under R.C. 102.03 (D). See Advisory Ops. No. 79-008, 85-006, 85-011, 86-007, 88-004, 89-005, and 90-004. Specifically, the Ethics Commission has held that a commercial or economic advantage to a business is a thing of value for purposes of R.C. 102.03 (D). See Advisory Ops. No. 84-012, 84-013, 85-013, 85-014, 86-007, and 90-002. In this instance, a commercial advantage which a department store would receive from assistance provided by the City in building a store on the downtown site is a thing of value for purposes of R.C. 102.03 (D).

The Ethics Commission has held that R.C. 102.03 (D) prohibits a public official from using the authority or influence of his office to secure anything of value for himself, or for another person or entity if the relationship between the official and that person or entity could impair the official's objectivity and independence of judgment with regard to matters that affect that party. See Advisory Ops. No. 88-004, 88-005, 89-015, 89-016, 90-007, 90-008, and 91-004. Accordingly, the Commission has held that R.C. 102.03 (D) prohibits a public official from participating in any matter that would result in a definite and direct pecuniary benefit or detriment for his private employer. See Advisory Op. No. 89-008 (a city council member is prohibited from participating in considering an application for a property tax abatement submitted by his employer). See also 90-008 and 91-004. It must be stressed, however, that in order for an official to be prohibited by R.C. 102.03 (D) from participating in a matter, the matter must result in a definite and direct pecuniary benefit or detriment and that pecuniary benefit or detriment must be of such a character as to manifest a substantial and improper influence upon him with respect to his duties. See Advisory Opinion No. 90-004.

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In Advisory Opinion No. 91-004, the Ethics Commission addressed the issue of a public official participating in a matter which may affect a client or customer of his private employer, holding:

In most instances, the relationship between the official and a customer [of the official's employer] would be so remote that the customer's interests would not be of such character as to manifest a substantial and improper influence upon the [official].

However, also in that opinion, the Commission cautioned that each case must be examined on its own facts. Therefore, the issue is in the instant situation is whether you or your employer would derive a definite and direct pecuniary benefit or detriment if the City were to aid a client of your employer or a competitor of your employer's client in establishing a department store on the downtown site.

In Advisory Opinion No. 91-004, the Ethics Commission held that R.C. 102.03 (D) prohibits a city planning commission member from participating in a matter that would directly affect the pecuniary interests of his private employer or his own interests as an employee, or in any matter where he or his employer would have a contingent interest in the planning commission's decision. The Commission held that R.C. 102.03 (D) does not prohibit the planning commission member from participating in matters affecting the interests of the employer's client unless the relationship between the commission member as an employee and the client is such that the commission member's objectivity and independence of judgment could be impaired with regard to matters that affect the client's interest.

Furthermore, in Advisory Opinion No. 90-008, the Commission held that R.C. 102.03 (D) does not prohibit a city council member from participating in a matter pending before city council in which a client of the council member's employing firm has an interest or contingent interest, unless a member of his firm is representing the client before city council or has provided consultation and advice to the client on that matter, or unless the employer's receipt of fees from the client is dependent upon the city council's determination of the matter, or the council member's independence of judgment could otherwise be impaired. See also Advisory Opinion No. 86-002 (a city council member, who is an officer and shareholder of an insurance agency is not prohibited from participating in city council's approval of a contract between the city and a client of the insurance agency if the insurance services are not specifically connected with the contract and the agency would provide insurance to the client regardless of whether it receives the city contract).

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In the instant situation, it is recognized that a decision by city council which concerns a competitor of a client of your private employer may indirectly affect the financial interests of your employer's client. Also, the effect upon your private employer's client may indirectly affect your employer and even yourself. However, nothing has been presented which suggests that your private employer is providing marketing, advertising, and public relations services to the client specifically in connection with this matter or that your employer will directly suffer a financial detriment if city council decides to assist a competing department store chain construct a new store on this downtown site. Furthermore, nothing suggests that your continued employment or salary is definitely and directly dependent upon this decision of city council. It is apparent that any detriment which you or your private employer would realize from city council's action on this matter is speculative and indefinite rather than definite and direct.

Therefore, the fact that your private employer has a client which may be directly or indirectly affected by an action of city council regarding the client or client's competitor, is insufficient to hold that R.C. 102.03 (D) prohibits you from participating on the matter before city council which may affect the financial interests of a client of your private employer and/or a competitor of the client.

Accordingly, R.C. 102.03 (D) does not prohibit you from participating in matters affecting the financial interests of a client of your private employer and/or a competitor of your employer's client, where neither you nor your private employer's financial interests, are definitely and directly affected.

As a final matter, your attention is directed to R.C. 102.03 (B), which reads:

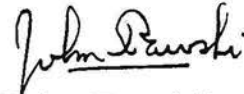
- (B) No present or former public official or employee shall disclose or use, without appropriate authorization, any information acquired by him in the course of his official duties which is confidential because of statutory provisions, or which has been clearly designated to him as confidential when such confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary to the proper conduct of government business.

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R.C. 102.03 (B) prohibits you from disclosing confidential information which you acquired in your position as a member of city council to your employer, your employer's client, or any other person, or using such information, without appropriate authorization. See Advisory Op. No. 89-006. This limitation is applicable during your public service, and after, and remains in effect as long as the information remains confidential. Id.

This advisory opinion embodies a decision which was approved by the Ethics Commission at its meeting on October 18, 1993. The opinion is based on the facts presented and is limited to questions arising under Chapter 102. of the Revised Code and does not purport to interpret other laws or rules. If you have any questions, please feel free to contact this Office again.

Very truly yours,



John Rawski
Staff Attorney