

OHIO ETHICS COMMISSION

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January 12, 1999

Informal Opinion 1999-INF-0112-2

Robin L. Parker, General Counsel
Office of General Counsel
Miami University

Dear Ms. Parker:

In a letter received by the Ethics Commission on May 12, 1998, you asked whether the Ethics Law and related statutes would prohibit employees of a state university, who own stock in an area golf course, from participating in the development of the state university's Request for Proposals for the rental of golf course facilities that will be sent to area golf courses. You also asked whether the Ethics Law and related statutes would prohibit the employee-stockholders from participating in the decision-making process if the golf course in which they own stock submits a proposal in response to the Request for Proposals. Finally, you asked whether the employee-stockholders would be deemed to have an unlawful interest in a public contract in violation of R.C. 2921.42 if their state university contracts with the golf course in which they own stock as a result of the Request for Proposals process, or whether they would be covered by the exemption in 2921.42(B).

As more fully explained below, if the employee-stockholders' state university enters into a contract with the golf course in which they own stock, R.C. 2921.42(A)(4) would prohibit them from owning stock in that golf course, unless they can meet an exemption to the prohibition against having an interest in a public contract with a state university with which they are connected. R.C. 2921.42(A)(1) would also prohibit the employee-stockholders from developing the Request for Proposals, evaluating proposals received, recommending the proposal to accept, and from otherwise using their public positions in any way to secure authorization of a public contract with the golf course in which they own stock, unless they can meet an exemption to the prohibition against having an interest in a public contract with their own state university. R.C. 2921.42(A)(3) would prohibit the employee-stockholders from profiting from the proposed contract, if it is awarded to the golf course in which they own stock, and the employee-stockholders are deemed to have authorized the contract. R.C. 102.03(D) would prohibit the employee-stockholders from taking any action to secure a contract with the golf course in which they own stock if this could manifest a substantial and improper influence upon them with respect to their duties and from using their public positions in any other way to benefit the golf course. Finally, R.C. 102.03(B) would prohibit the employee-stockholders from using or disclosing, without proper authorization, confidential information acquired in the course of their official duties to the golf course in which they own stock or to any other party.

Facts

You have stated that Miami University is contemplating contracting with an area golf course to secure practice and play facilities for the intercollegiate men's golf team and for the basic golf instruction class offered for academic credit at the Oxford campus through the Department of Physical Education, Health and Sports Studies. You have stated that Miami University anticipates issuing a Request for Proposals ("RFP") to area golf courses. You have indicated that the RFP will be the responsibility of four Miami University employees: William Davidge, Basic Instruction Coordinator of the Department of Physical Education, Health and Sports Studies; Roger Cromer, Head Golf Coach; Richard Keebler, Director of Purchasing; and Edward J. Demske, Senior Vice President for Finance and University Services and Treasurer. You have described Mr. Davidge and Mr. Cromer as the most knowledgeable staff members with regard to golf. You have indicated that they, and Mr. Keebler, will be responsible for developing the RFP, evaluating proposals received, and recommending the proposal to accept. Mr. Demske will make the final decision, based upon the recommendations of Mr. Davidge, Mr. Cromer, and Mr. Keebler.

You anticipate proposals from Indian Ridge Golf Course, Hueston Woods Golf Course, and Oxford Country Club. You state that these three facilities are the only facilities reasonably close to Miami University's Oxford Campus. You indicate that Indian Ridge Golf Course is owned by a corporation, that this corporation has fifty outstanding shares, and that Mr. Davidge and Mr. Cromer each own one of these shares. You state that the interests of Mr. Davidge and Mr. Cromer are limited to their stock ownership in Indian Ridge Golf Course.

Having an Interest in a Public Contract—R.C. 2921.42(A)(4)

Your attention is directed to Division (A)(4) of Section 2921.42 of the Revised Code, which provides that no public official shall knowingly:

Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which he is connected.

The term "public official" is defined, for purposes of R.C. 2921.42, to include any elected or appointed officer, employee, or agent of any political subdivision of the state. R.C. 2921.01(A). An employee of a state university is a "public official" for purposes of R.C. 2921.42. See Ohio Ethics Commission Advisory Opinions No. 83-003 and 92-001. Miami University is included within the definition of a "state university." See R.C. 3345.011. Mr. Davidge and Mr. Cromer, as employees of Miami University, are "public officials" for purposes of R.C. 2921.42, and are subject to its statutory prohibitions.

The term "public contract" is defined, for purposes of R.C. 2921.42 in Division (G)(1)(a) of that section, to include the purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of the state, any of its political subdivisions, or any agency or instrumentality of either. Therefore, a contract between Miami University and

an area golf course for the rental of golf course facilities is a "public contract" for purposes of R.C. 2921.42, since it is a contract for the purchase or acquisition of property or services by or for the use of a state university. See Adv. Ops. No. 88-007 and 88-008.

R.C. 2921.42(A)(4) prohibits Mr. Davidge and Mr. Cromer from having an interest in the profits or benefits of a public contract entered into by a political subdivision or governmental agency or instrumentality with which they are "connected." The Ethics Commission has held that to be "connected with" something is to be related to, or associated with, that entity. See Adv. Op. No. 87-002. Mr. Davidge and Mr. Cromer, as Miami University employees, are related to, or associated with, Miami University, and are therefore, "connected with" Miami University for purposes of R.C. 2921.42(A)(4). Id.

An "interest" which is prohibited under R.C. 2921.42 must be definite and direct, and may be either pecuniary or fiduciary in nature. See Adv. Op. No. 89-004. The Ethics Commission has held that a public official who has an ownership interest in a business has a pecuniary interest in the contracts of that business for purposes of R.C. 2921.42. See Adv. Op. No. 94-002. As stockholders of Indian Ridge Golf Course, Mr. Davidge and Mr. Cromer have an ownership interest in the golf course, and have an "interest" in its contracts for purposes of R.C. 2921.42(A)(4). See Adv. Op. No. 93-001. If Miami University enters into a public contract with Indian Ridge Golf Course, then Mr. Davidge and Mr. Cromer would have an interest in a public contract with a state university with which they are connected. R.C. 2921.42(A)(4) would thus prohibit them from owning stock in Indian Ridge Golf Course if Miami University enters into a public contract with that golf course.

Exemption Based on Limited Stockholder Interest—R.C. 2921.42(B)

You have stated, however, that Mr. Davidge and Mr. Cromer are merely stockholders of the golf course. Division (B) of Section 2921.42 of the Revised Code provides a limited exemption to the prohibition of R.C. 2921.42(A)(4) in a situation involving a limited stockholder interest. Division (B) reads as follows:

- (B) In the absence of bribery or a purpose to defraud, a public official, member of his family, or any of his business associates shall not be considered as having an interest in a public contract or the investment of public funds, if all of the following apply:
 - (1) The interest of that person is limited to owning or controlling shares of the corporation, or being a creditor of the corporation or other organization, that is the contractor on the public contract involved, or that is the issuer of the security in which public funds are invested;
 - (2) The shares owned or controlled by that person do not exceed five per cent of the outstanding shares of the corporation, and the amount due that person as creditor does not exceed five per cent of the total indebtedness of the corporation or other organization;

- (3) That person, prior to the time the public contract is entered into, files with the political subdivision or governmental agency or instrumentality involved, an affidavit giving his exact status in connection with the corporation or other organization. (Emphasis added.)

Division (B) provides that, in the absence of bribery or fraud, a public official shall be considered as not having an interest in a public contract with his own political subdivision when all of the following elements are met: (1) the interest of the public official is limited to owning or controlling shares of a corporation; (2) the amount owned or controlled does not exceed five per cent of the outstanding shares of the corporation; and (3) the public official, prior to the time the public contract is entered into, files with his political subdivision an affidavit giving his status with the organization. See Adv. Ops. No. 89-011 and 93-001.

In the instant situation, you have stated that: (1) the relationships of Mr. Davidge and Mr. Cromer with Indian Ridge Golf Course are limited to their respective ownership of one share of stock; (2) Indian Ridge Golf Course has fifty outstanding shares of stock; and (3) Miami University has not yet entered into a contract with Indian Ridge Golf Course or any other golf course. You did not state whether Mr. Davidge and Mr. Cromer have filed public affidavits with Miami University giving their exact status as stockholders.

The facts which you have provided indicate that Mr. Davidge and Mr. Cromer could meet the exemption of Division (B), if they file public affidavits with Miami University prior to the time that Miami University enters into a contract with Indian Ridge Golf Course, because each man's interest is limited to owning two percent of Indian Ridge Golf Course's total outstanding shares. However, the Ethics Commission has explained that its function in rendering advisory opinions is not a fact-finding process. See Adv. Ops. No. 75-037 and 90-013. Thus, the Ethics Commission, in rendering its opinion, must rely on the accuracy and completeness of the facts presented in the request for an advisory opinion. Id. The criteria necessary to meet an exemption to the prohibition imposed by R.C. 2921.42 are strictly applied against the public official, and the burden is on the official to demonstrate that he is in compliance with the exemption. See Adv. Op. No. 87-003 (addressing the exemption provided by R.C. 2921.42(C)).

If Mr. Davidge and Mr. Cromer are able to meet the requirements in R.C. 2921.42(B), they would not be considered to have an interest in any contract between Miami University and Indian Ridge Golf Course. However, prior to the time that the university and golf course enter into a contract, Mr. Davidge and Mr. Cromer must file the affidavit required in R.C. 2921.42(B)(3) with the university. If this exemption to the prohibition of R.C. 2921.42(A)(4) cannot be met, and Miami University enters into a contract with Indian Ridge Golf Course, then Mr. Davidge and Mr. Cromer would, as stockholders of the golf course, be deemed to have an "interest" in a public contract with a state university with which they are connected. See Adv. Op. No. 93-001. R.C. 2921.42(A)(4) would thus prohibit them from having an interest, as stockholders of Indian Ridge Golf Course, in any contract between Miami University and that golf course. Assuming that the exemption in R.C. 2921.42(B) can be established, so that Mr. Davidge and Mr. Cromer would not be considered to have an interest in a contract with Miami

University, the university employees are still subject to other provisions of the Ohio Ethics Law and related statutes.

Authorization of a Public Contract—R.C. 2921.42(A)(1)

Your attention is next directed to Division (A)(1) of Section 2921.42 of the Revised Code, which provides that no public official shall knowingly:

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.

As discussed above, Mr. Davidge and Mr. Cromer, as stockholders of Indian Ridge Golf Course, have an interest in the contracts of Indian Ridge Golf Course for purposes of R.C. 2921.42. See Adv. Ops. No. 90-005 and 93-001. However, because they own less than five percent of the outstanding shares of the golf course, and assuming they meet the other requirements of R.C. 2921.42(B), Mr. Davidge and Mr. Cromer would not be considered to have an interest in the contracts of Indian Ridge Golf Course. The prohibition in R.C. 2921.42(A)(1), however, applies not only where the public official himself has an interest, but also where his business associates and family members have an interest.

The issue thus becomes whether the golf course in which Mr. Davidge and Mr. Cromer own stock is their "business associate" for purposes of R.C. 2921.42(A)(1). See Adv. Op. No. 93-001. The term "business associate" is not statutorily defined for purposes of R.C. 2921.42(A)(1). However, the Ethics Commission has held that a business associate relationship exists whenever parties act together to pursue a common business purpose. See Adv. Ops. No. 86-002 and 89-015. In Advisory Opinion No. 93-001, the Ethics Commission stated:

Therefore, it is apparent that a stockholder has only a limited relation with a corporation, and in most instances purchases stock in a corporation, not with any desire to manage or control the corporation or its property, but only in order to receive a return on his capital. Thus, provided that a public official's relationship to a corporation is limited solely to owning stock in the corporation, it cannot be said that the official and the corporation act together to pursue a common business purpose. However, it must be emphasized that a stockholder is a "business associate" of a corporation for purposes of R.C. 2921.42(A)(1) if he serves the corporation as a director, officer, agent or representative, employee, or partner, if he is capable of affecting the corporation's management or operation, or if the facts otherwise so indicate. See Crosby v. Beam, 47 Ohio St. 3d 105 (1989) (a close corporation resembles a partnership since the small number of stockholders in a close corporation depend upon each other for the corporation to succeed) and South High Development, Ltd. v. Weiner, Lippe & Cromley Co., L.P.A., (an attorney-shareholder of a legal professional association is personally liable for the obligations of the association since he has direct contact with running the

corporation). See also Advisory Opinions No. 78-006, 84-013, 85-004, and R.C. 102.03(D).

In the instant situation, Mr. Davidge and Mr. Cromer are mere stockholders and own a de minimis amount of stock; accordingly, the golf course is not their "business associate" for purposes of R.C. 2921.42(A)(1). Therefore, if they are able to meet an exemption to the prohibition against having an interest in the proposed contract, and if they have no business associates or family members who have an interest in the proposed contract, R.C. 2921.42(A)(1) would not prohibit them from participating in Miami University's decision-making process. But see R.C. 2921.42(A)(3) and R.C. 102.03(D) (described below).

Occupying a Position of Profit in a Public Contract—R.C. 2921.42(A)(3)

Your attention is also directed to Division (A)(3) of Section 2921.42 of the Revised Code, which provides that no public official shall knowingly:

During his term of office or within one year thereafter, occupy any position of profit in the prosecution of a public contract authorized by him or by a legislative body, commission, or board of which he was a member at the time of authorization, unless the contract was let by competitive bidding to the lowest and best bidder.

R.C. 2921.42(A)(3) does not prohibit a public official from "[h]av[ing] an interest in the profits or benefits of a public contract," but rather prohibits a public official from "occupy[ing] any position of profit in the prosecution of a public contract," under specific circumstances. See Adv. Op. No. 93-001. Therefore, the exemption provided by 2921.42(B) to the prohibition against a public official having an "interest" in a contract with his own political subdivision does not provide an exemption to the prohibition imposed by R.C. 2921.42(A)(3). Id.

The Ethics Commission has held that a stockholder occupies a position of profit in the corporation's contracts. Id. See also R.C. 102.03(D) (described below). Neither Division (B), nor any other provision in Section 2921.42, would except profits under any certain amount from the prohibition of Division (A)(3). See Adv. Op. No. 90-005. Thus, a stockholder who owns only a fractional or de minimis amount of stock will be deemed to profit from the corporation's contracts. See Adv. Op. No. 93-001. Thus, Mr. Davidge and Mr. Cromer would "occupy a position of profit" in a contract between Miami University and the golf course in which they own stock.

For purposes of R.C. 2921.42(A)(3), a public contract will be deemed to have been "authorized" by a public official or board if the contract could not have been awarded without the approval of the official or his board. See Adv. Ops. No. 87-004 and 92-008. You have stated that Mr. Davidge and Mr. Cromer would be responsible for developing the RFP, evaluating proposals received, and recommending the proposal to accept. These activities would be considered "authorization" of the contract. Therefore, if Mr. Davidge and Mr. Cromer "authorize" a contract between Miami University and Indian Ridge Golf Course, R.C.

2921.42(A)(3) would prohibit them, during their public employment and for one year thereafter, from occupying a position of profit in the performance of the contract, unless the contract was let by competitive bidding and was awarded to the lowest and best bidder. See Adv. Ops. No. 87-004, 91-009, and 92-008.

In the instant situation, you have stated that Miami University, in awarding the proposed contract, intends to employ a RFP process and solicit bids from area golf courses only. While an RFP is a competitive process, it is not a competitive bid, as required by R.C. 2921.42(A)(3). Thus, Miami University's contract will not be let by competitive bidding to the lowest and best bidder. See R.C. 125.07. You have also indicated that Mr. Davidge and Mr. Cromer will participate in Miami University's award of the proposed contract by developing the RFP, evaluating proposals received, and recommending the proposal to accept. Therefore, R.C. 2921.42(A)(3) would prohibit Mr. Davidge and Mr. Cromer from owning stock in Indian Ridge Golf Course if Miami University enters into the proposed contract with Indian Ridge Golf Course.

Conflict of Interest Prohibition—R.C. 102.03(D)

Your attention is also directed to Division (D) of Section 102.03 of the Revised Code, which reads as follows:

No public official or employee shall use or authorize the use of the authority or influence of 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 the public official or employee with respect to that person's 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 or is an employee of any public agency. R.C. 102.01(B). R.C. 102.01(C) defines "public agency" to include any instrumentality of the state, such as a state university. See Adv. Op. No. 77-005. Thus, Miami University, as a state university, is a public agency. See R.C. 3345.011. R.C. 102.01(B) excludes educators who do not have the authority to perform administrative or supervisory functions from the definition of "public official or employee." However, Mr. Davidge, as Basic Instruction Coordinator of the Department of Physical Education, Health and Sports Studies, and Mr. Cromer, as Head Golf Coach, do perform administrative functions as part of their jobs, as evidenced by the duties you have stated that they would perform with respect to the proposed contract. As such, they are not excluded from the definition of "public official or employee." See Adv. Ops. No. 77-005 and 93-017. Thus, Mr. Davidge and Mr. Cromer are "public officials or employees" for purposes of R.C. 102.03, and are, therefore, subject to the prohibitions of that section.

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. 102.01(G). A pecuniary interest in a private business, and the impact of a contract to that business, is a thing of value under R.C. 102.03(D). See Adv. Ops. No. 86-007 and 87-006. In the instant situation, a return on Mr. Davidge's and Mr. Cromer's investment of capital as stockholders which would result from

Miami University's contract with the golf course is a thing of value for purposes of R.C. 102.03(D). See Adv. Op. No. 93-001.

R.C. 102.03(D) does not speak in terms of a public official's or employee's "interest" or "position of profit," but rather prohibits a public official or employee from taking any action, formally or informally, to secure a thing of value if the thing of value could manifest a substantial and improper influence upon the public official or employee with respect to that person's duties. See Adv. Ops. No. 88-004 and 91-004. The Ethics Commission has held that a determination of whether a thing of value could manifest a substantial and improper influence upon a public official or employee with respect to that person's duties is dependent upon the facts and circumstances of each individual situation. See Adv. Ops. No. 87-008, 88-004, and 91-004.

In the instant situation, it is proposed that Mr. Davidge and Mr. Cromer participate in Miami University's selection of a golf course. If Mr. Davidge's and Mr. Cromer's ownership of stock in Indian Ridge Golf Course could impair their objectivity and independence of judgment, and thus manifest a substantial and improper influence upon them with regard to matters affecting the golf course, then R.C. 102.03(D) would prohibit them from participating in Miami University's selection of a golf course for the proposed contract. See Adv. Ops. No. 88-004 and 91-004.

A matter which affects the personal financial interests of a public official or employee would generally be of such a character as to manifest an improper influence upon him with respect to his duties. See Adv. Ops. No. 88-004 and 90-003. However, in order for R.C. 102.03(D) to prohibit a public official or employee from participating in a matter which would secure a thing of value for himself, the thing of value must also be of a "substantial" nature. See Adv. Ops. No. 86-011 and 92-014. The word "substantial" means "of or having substance, real, actual, true; not imaginary; of considerable worth or value; important." Adv. Op. No. 89-014 (quoting Adv. Ops. No. 75-014 and 76-005). While R.C. 102.03(D), unlike R.C. 2921.42(B), does not provide a definite amount under which a public official or employee who is a stockholder would not be subject to its prohibitions, the Ethics Commission has explained that the prohibition of R.C. 102.03(D) will not apply in instances where the thing of value is nominal or de minimis in value. See Adv. Op. No. 92-014. However, the Commission warned that even if a thing of value is nominal or de minimis, a quantity of de minimis or nominal items could have a substantial cumulative value for the recipient if their receipt extends over time. See Adv. Ops. No. 86-003, 89-014, and 92-014.

The issue becomes whether, in the instant situation, the return on Mr. Davidge's and Mr. Cromer's investment of capital as stockholders which would result from Miami University's contract with Indian Ridge Golf Course, would be a "substantial" thing of value for purposes of R.C. 102.03(D). Mr. Davidge and Mr. Cromer each own two percent of the golf course's total outstanding shares. The facts and circumstances of the instant situation determine whether the return on their investment, either from appreciation in the stock's value, or in the form of dividends which would result from Miami University's contract with Indian Ridge Golf Course, would be "substantial" for purposes of R.C. 102.03(D). The Ethics Commission's function in

rendering advisory opinions is not a fact-finding process. Because the return on their investment could be "substantial," depending on the facts, it is advisable that Mr. Davidge and Mr. Cromer do not participate in Miami University's selection of a golf course for the proposed contract.

Mr. Davidge's and Mr. Cromer's relationships as stockholders of Indian Ridge Golf Course would manifest a "substantial and improper influence" for purposes of R.C. 102.03(D) if the facts and circumstances establish that Mr. Davidge and Mr. Cromer would realize a substantial return from a contract between Miami University and Indian Ridge Golf Course or where the facts would otherwise indicate that the stock is of an improper and substantial character. See Adv. Ops. No. 88-004 (an official or employee who owns stock in a closely held corporation could face impaired objectivity if he participated in matters affecting another shareholder) and 91-004 (an official or employee who owns stock in a bank is prohibited from participating in matters affecting the interests of a bank customer where the bank would also have a direct or contingent interest). Furthermore, it must be emphasized that a public official's or employee's participation in a matter which would secure a thing of value for a company in which he owns stock could create the appearance of impropriety even if it is not prohibited by R.C. 102.03(D) or other provisions of the Ethics Laws. See Adv. Op. No. 86-003.

It was proposed that Mr. Davidge and Mr. Cromer develop an RFP for Miami University's contemplated contract with an area golf course. Therefore, the specifics of the university's contract with an area golf course have yet to be determined. However, if Miami University's finalized contract provides that compensation paid to the golf course by the university will be based on the number of university students using the golf course, and Indian Ridge Golf Course is awarded the contract, Mr. Davidge and Mr. Cromer will continue to face conflict of interest restrictions after the award of the contract, even if the employees complied with the restrictions of the Ethics Law described above.

As discussed above, R.C. 102.03(D) prohibits Mr. Davidge and Mr. Cromer from using the authority or influence of their public positions to secure a "substantial" thing of value. If the compensation paid by Miami University to Indian Ridge Golf Course, pursuant to the contract, would be based on the number of university students using the golf course, the enrollment of additional students for the university's golf class or golf team could result in a "substantial" thing of value for purposes of R.C. 102.03(D). The facts and circumstances of the instant situation will determine whether the recruitment of additional students would result in a "substantial" thing of value that would manifest a substantial and improper influence upon Mr. Davidge and Mr. Cromer with respect to their duties.

Accordingly, Mr. Davidge, as Basic Instruction Coordinator of the Department of Physical Education, Health and Sports Studies and Mr. Cromer, as Head Golf Coach, would be prohibited by R.C. 102.03(D) from using their positions to recruit additional students for the golf class or golf team, if the result of the recruitment would be additional revenues for the golf course. However, this may inherently conflict with their need within their university positions, or the university's need, to recruit additional students for the golf class or team. Therefore, if Miami University's contract with Indian Ridge Golf Course is based on the number of university students using the golf course, and if Mr. Davidge's and Mr. Cromer's recruitment of additional

students for the golf class or team would result in a “substantial” thing of value for them, R.C. 102.03(D) would prohibit them from continuing to own stock in that golf course. R.C. 102.03(D) would also prohibit them from using their public positions to encourage university students or others to join or use Indian Ridge Golf Course, if this would result in a substantial thing of value for them as stockholders of that golf course.

Disclosure of Confidential Information—R.C. 102.03(B)

Finally, your attention is directed to Division (B) of Section 102.03 of the Revised Code, which provides:

No present or former public official or employee shall disclose or use, without appropriate authorization, any information acquired by the public official or employee in the course of the public official’s or employee’s official duties that is confidential because of statutory provisions, or that has been clearly designated to the public official or employee as confidential when that 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.

R.C. 102.03(B) prohibits a public official or employee from using or disclosing, without proper authorization, confidential information acquired in the course of his official duties to any party. Thus, R.C. 102.03(B) prohibits Mr. Davidge and Mr. Cromer from disclosing to Indian Ridge Golf Course any information that would provide it with an advantage over other golf courses seeking to enter into a contract with Miami University or in its dealings with the university. No time limit exists for the prohibition of R.C. 102.03(B), and it is effective during their public employment and after. See Adv. Op. No. 88-009.

Conclusion

As more fully explained above, if the employee-stockholders’ state university enters into a contract with the golf course in which they own stock, R.C. 2921.42(A)(4) would prohibit them from owning stock in that golf course, unless they can meet an exemption to the prohibition against having an interest in a public contract with a state university with which they are connected. R.C. 2921.42(A)(1) would prohibit the employee-stockholders from developing the Request for Proposals, evaluating proposals received, recommending the proposal to accept, and from otherwise using their public positions in any way to secure authorization of a public contract with the golf course in which they own stock, unless they can meet an exemption to the prohibition against having an interest in a public contract with their own state university. R.C. 2921.42(A)(3) would prohibit the employee-stockholders from profiting from the proposed contract, if it is awarded to the golf course in which they own stock, and the employee-stockholders are deemed to have authorized the contract. R.C. 102.03(D) would prohibit the employee-stockholders from taking any action to secure a contract with the golf course in which they own stock if this could manifest a substantial and improper influence upon them with respect to their duties and from using their public positions in any other way to benefit the golf

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course. Finally, R.C. 102.03(B) would prohibit the employee-stockholders from using or disclosing, without proper authorization, confidential information acquired in the course of their official duties to the golf course in which they own stock or to any other party.

This informal advisory opinion was approved by the Commission at its meeting on January 12, 1999. It represents the views of the undersigned, based on the precedent of the Commission and the facts presented. It is limited to questions arising under Chapter 102. and Sections 2921.42, 2921.421, and 2921.43 of the Revised Code, and does not purport to interpret other laws or rules. If you have any other questions, please do not hesitate to contact this office again.

Sincerely,

A handwritten signature in black ink that reads "Laura Evans Nolan". The signature is written in a cursive, flowing style.

Laura Evans Nolan
Staff Attorney