

OHIO ETHICS COMMISSION

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David E. Freel, *Executive Director*

June 22, 2007

Informal Opinion 2007-INF-0622-2

Sandra Stephenson

Dear Ms. Stephenson:

On May 1, 2007, the Ohio Ethics Commission received your request for an advisory opinion. In your letter, you described the steps that you plan to take to resolve potential conflicts in anticipation of your appointment to the position of Director of the Ohio Department of Mental Health (ODMH). Subsequent to sending the letter, you were appointed to the position effective June 4, 2007.

First, you explained that you co-own residential property with the executive director of a county mental health board and a senior manager of a non-profit provider of mental health services. Because these individuals are employed by organizations that receive funding and oversight from ODMH, you have decided to divest yourself of your one-third interest in the property by giving it to your adult son in a quitclaim deed and moving out of the residence.

Second, you explained that, prior to your appointment, you were the executive director of Southeast, Inc., a Central Ohio non-profit mental health services provider. You resigned from this position when you were appointed to ODMH Director and you either have moved or will move, as soon as it is feasible, the three retirement accounts you hold through Southeast. You indicated that once you receive your final employment check and move the retirement accounts, which may occur after you begin your service with ODMH, you will have no ongoing financial or legal relationship with Southeast. You also stated that, as the Director of ODMH, you will be cognizant of the appearance of impropriety regarding actions which may inappropriately benefit your long-time former employer.

You have requested that the Commission review the actions you have proposed to guard against potential conflicts of interest related to the residential property and Southeast. You also asked if there are any additional steps you should take to avoid related conflicts.

Brief Answer

As explained more fully below, the actions you have proposed to divest yourself of your personal financial and fiduciary interests in the property and Southeast, Inc. will help you guard against conflicts that could arise while you serve as the Director of ODMH. You are also prohibited from participating in matters involving Southeast until after you have received your final paycheck and severed your other ties with the corporation. Finally, you are prohibited from taking any action regarding a contract between ODMH and Southeast if you signed or were part of the decision-making regarding the contract in your capacity as director of Southeast.

Conflict of Interest Restrictions—R.C. 102.03(D) and (E)

R.C. 102.03(D) and (E) apply to the question you have raised:

- (D) 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.
- (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 the public official or employee with respect to that person's duties.

The Director of ODMH is a "public official or employee" subject to the restrictions of R.C. 102.03. See R.C. 102.01(B) and (C); Ohio Ethics Commission Advisory Opinion No. 89-007. The term "anything of value" includes money and every other thing of value. R.C. 1.03; 102.03(G). A definite and direct pecuniary benefit, or the avoidance of a detriment, is considered to be a thing of value. Adv. Ops. No. 88-004 and 92-019. A decision regarding the award of a public contract is also within the definition of anything of value. Adv. Op. No. 2003-02.

R.C. 102.03(D) and (E) prohibit a public official from soliciting a particular and definite substantial benefit, or using the authority or influence of her public position, formally or informally, in any matter that would render a definite and direct financial benefit or avoid a detriment, for a current employer or someone with whom the official has an existing close economic or financial relationship. Adv. Ops. No. 88-005 and 89-008. A public official is prohibited from accepting or securing a substantial thing of value for a party with whom she has a close economic or business relationship because these relationships could impair the public official's objectivity and independence of judgment. Adv. Ops. No. 88-004, 89-008, and 97-002. However, a public official is generally not prohibited from participating in matters affecting a former employer or someone with whom she formerly had a financial relationship, as long as there is no ongoing connection between the parties. See generally Adv. Op. No. 90-011.

If, for example, a public official's former employer owes her commissions or other payments related to work she completed, the public official would have a continuing relationship with the former employer such that she would be prohibited from participating in matters that affect that party. Adv. Op. No. 2003-02. Also, there may be situations where the unique facts limit a public official's ability to participate in matters affecting her former private employer. For example, in Advisory Opinion No. 88-009, the Commission determined that a board member of a joint-county community mental health district was prohibited from taking any action regarding a contract between the mental health board and a private, non-profit agency he formerly served as director, where he signed the contract in his capacity as director of the agency.

The steps you have proposed to divest yourself of your financial and fiduciary interest in the property and thereby ending your financial relationship with individuals whose agencies may have matters before ODMH, and fully severing your ties to Southeast, Inc., will help you avoid conflicts involving those parties that could arise as Director of ODMH. You should also refrain from participating in matters involving Southeast until after you have received your final paycheck and transferred your investment accounts from the corporation. Additionally, if, as the director of Southeast, you signed or were part of the decision-making process regarding a contract between ODMH and the corporation, you are prohibited from participating in matters regarding that contract.

Conclusion

The actions you have proposed to divest yourself of your personal financial and fiduciary interests in the property and Southeast, Inc. will help you avoid conflicts that could arise as the Director of ODMH. You are also prohibited from participating in matters involving Southeast until after you have received your final paycheck and severed your other ties with the corporation. Additionally, you are prohibited from taking any action regarding a contract between ODMH and Southeast if you signed or were part of the decision-making regarding the contract in your former capacity as director of the corporation.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on June 22, 2007. The Commission commends you for seeking guidance in order to make sure the steps you are taking comport with the Ethics Law and related statutes.

The opinion is based on the facts presented. It 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. If you have any questions or desire additional information, please feel free to contact this Office again.

Sincerely,



Karen R. King
Staff Advisory Attorney