



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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Advisory Opinion No. 84-014
December 13, 1984

Syllabus by the Commission:

- (1) Division (D) of Section 102.03 of the Revised Code prohibits a city fire chief from soliciting or receiving a commission on the purchase of fire equipment by the city.
- (2) Division (A)(1) of Section 2921.42 of the Revised Code prohibits a city fire chief from knowingly authorizing or otherwise using the authority or influence of his office to secure approval of a contract between the city and a fire equipment firm with which he is associated.
- (3) Division (A)(4) of Section 2921.42 of the Revised Code prohibits a city fire chief from knowingly having any interest in the profits or benefits of a contract between the city and a fire equipment firm with which he is associated.

* * * * *

You asked whether the Ohio Ethics Law and related statutes would prohibit a city fire chief, who is associated as an independent contractor with a fire equipment firm, from receiving a commission on the sale of fire equipment to the city with which he is employed.

You stated, by way of history, that a city fire chief is responsible for preparing and revising bid specifications for the purchase of fire equipment by his jurisdiction. You stated further that the city has determined that it is necessary to purchase equipment for one or more of its fire engines. You indicated that the fire chief is an independent contractor with a fire equipment corporation that sells fire engines and equipment to municipalities and other jurisdictions in the state, and that the city is in the area to which the fire chief is assigned as a salesman. You asked whether the fire chief may receive a commission from the fire equipment firm on the sale of fire equipment to the city with which he serves.

Division (D) of Section 102.03 of the Revised Code provides:

No public official or employee shall use or attempt to use his official position to secure anything of value for himself that would not ordinarily accrue to him in the performance of his official duties, which thing is of such character as to manifest a substantial and improper influence upon him with respect to his duties.

The elements of Division (D) of Section 102.03 of the Revised Code are: (1) a public official or employee; (2) is prohibited from using or attempting to use his official position; (3) to

secure anything of value for himself; (4) the thing of value would not ordinarily accrue to him in the performance of his official duties; and (5) the thing of value is of such character as to manifest a substantial and improper influence upon him with respect to his duties.

In the instant case, the city fire chief is a "public official or employee" as defined in Division (B) of Section 102.01 of the Revised Code, and a commission on the sale of fire equipment is within the definition of "anything of value" in Section 1.03 of the Revised Code. Such a commission would not ordinarily accrue to the fire chief in the performance of his official duties. In addition, the receipt of such a commission is clearly of such character as to manifest a substantial and improper influence upon the fire chief with respect to his duties, since the prospect of financial gain could influence his decision to purchase the fire equipment and could impair his independence of judgment on later decisions regarding such fire equipment, particularly if there are any problems with its performance. Therefore, Division (D) of Section 102.03 of the Revised Code prohibits a city fire chief from soliciting or receiving a commission on the purchase of fire equipment by the city.

Division (A) of Section 2921.42 of the Revised Code provides, in pertinent part:

(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;

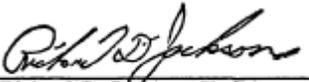
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(4) Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which he is connected.

A city fire chief is a "public official" as defined in Division (A) of Section 2921.01 of the Revised Code. A contract for the purchase or acquisition of fire equipment by the city is a "public contract" as defined in Division (E)(1) of Section 2921.42 of the Revised Code. A commission received on the sale of fire equipment is an "interest" in a such a contract. Therefore, Division (A)(1) of Section 2921.42 of the Revised Code prohibits a city fire chief from knowingly authorizing or otherwise using the authority or influence of his office to secure approval of a contract for the purchase of fire equipment in which he or any of his business associates, including the private firm that he represents, has an interest. In addition, even if the fire chief does not use or attempt to use his position to secure approval of the contract, he would still have a prohibited interest under Division (A)(4) of Section 2921.42 of the Revised Code in the profits or benefits of the contract for the purchase of fire equipment by the city if he receives a commission on the sale.

This advisory opinion is based on the facts presented and limited to questions arising under Chapter 102. and Section 2921.42 of the Revised Code.

Therefore, it the opinion of the Ohio Ethics Commission, and you are so advised that: (1) Division (D) of Section 102.03 of the Revised Code prohibits a city fire chief from soliciting or receiving a commission on the purchase of fire equipment by the city; (2) Division (A)(1) of Section 2921.42 of the Revised Code prohibits a city fire chief from knowingly authorizing or otherwise using the authority or influence of his office to secure approval of a contract between the city and a fire equipment firm with which he is associated; and (3) Division (A)(4) of Section 2921.42 of the Revised Code prohibits a city fire chief from knowingly having any interest in the profits or benefits of a contract between the city and a fire equipment firm with which he is associated.


Richard D. Jackson, Chairman
OHIO ETHICS COMMISSION