



OHIO ETHICS COMMISSION

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

Advisory Opinion Number 86-008
September 3, 1986

Syllabus by the Commission:

The Ohio Ethics Law and related statutes do not prohibit a city council member from establishing a private consulting firm to render services for clients seeking to do business with state agencies, provided that he uses his own time, facilities, and resources to conduct his private business, and that the clients are not regulated by, interested in matters before, or doing or seeking to do business with the city with which he is connected.

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You asked whether the Ohio Ethics Law and related statutes would prohibit the president of a city council from establishing a private consulting firm to render services on behalf of clients seeking to do business with agencies of the state.

You stated, by way of history, that you are a member of city council, and that your office is not a full-time position. You stated further that you have maintained outside employment with a private corporation, but you now contemplate establishing a private consulting firm to render services on behalf of business clients seeking to do business with state agencies. You indicated that your prospective clients are minority-owned firms which currently are not doing business with the state or the city. You asked whether such outside employment would create a conflict of interest.

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

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.

A member of city council is a "public official or employee" as defined in Division (B) of Section 102.01 of the Revised Code, since he is an elected officer of a political subdivision of the

state (See: Ohio Ethics Commission Advisory Opinion No. 80-007). Consulting fees received from a private client for services rendered in seeking contracts with state agencies are within the definition of "anything of value" in Section 1.03 of the Revised Code. Such consulting fees would not ordinarily accrue to a member of city council in the performance of his official duties. Thus, it is necessary to determine whether such consulting fees would be of such character as to manifest a substantial and improper influence on a member of city council in the performance of those duties.

In general, the Commission has held that Division (D) of Section 102.03 of the Revised Code does not prohibit a public official or employee from engaging in outside employment, provided that he does not use government time, facilities, or resources to pursue his private business, and that no other conflict of interest exists (See: Advisory Opinions No. 84-012, 84-014, and 85-014). However, the Commission has held that Division (D) of Section 102.03 of the Revised Code prohibits a public official or employee from soliciting or receiving consulting fees, honoraria, conference registration fees, travel expenses, commissions or other payments or fees from a party that is interested in matters before, regulated by, or doing or seeking to do business with the agency with which the official or employee serves (See: Advisory Opinions No. 79-002, 79-006, 80-004, 84-010, 84-012, 84-014, and 85-014). Thus, Division (D) of Section 102.03 of the Revised Code prohibits a member of city council from soliciting or receiving consulting fees from a private party that is interested in matters before, regulated by, or doing or seeking to do business with the city with which he is connected. However, he would not be prohibited from receiving consulting fees from private parties seeking to do business with state agencies, but which have no business dealings or interests with the city, provided he uses his own time, facilities and resources to render the services.

Your attention is also directed to other provisions of the Ohio Ethics Law and related statutes. Division (A) of Section 102.03 of the Revised Code prohibits a present or former city official or employee from representing a client or acting in a representative capacity before any public agency on any matter in which he has personally participated while in government service. This prohibition applies during government service and for one year thereafter. Division (C) of Section 102.04 of the Revised Code prohibits a city official or employee from receiving consulting fees for services rendered or to be rendered by him for a private firm in a matter that is before the city with which he serves. Division (A)(1) of Section 2921.42 of the Revised Code prohibits a city official or employee from authorizing, or otherwise using the authority or influence of his office to secure approval of a public contract in which he has an interest. Finally, Division (A)(4) of Section 2921.42 of the Revised Code prohibits a city official or employee from having an interest in the profits or benefits of a public contract with the city with which he is connected.

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

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that the Ohio Ethics Law and related statutes do not prohibit a city council member from establishing a private consulting firm to render services for clients seeking to do business with state agencies, provided that he uses his own time, facilities, and resources to conduct his private business, and

that the clients are not regulated by, interested in matters before, or doing or seeking to do business with the city with which he is connected.


Merom Brachman, Chairman
Ohio Ethics Commission