



JOINT LEGISLATIVE ETHICS COMMITTEE 129th OHIO GENERAL ASSEMBLY

Joint Legislative Ethics Committee
Advisory Opinion 2012-002

Committee

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Syllabus by the Committee:

1. R.C. §102.03(D) prohibits a Member of the General Assembly from voting on legislation that has a definite and particular effect on the Member's personal pecuniary interests.
2. A Member of the General Assembly is not a "business associate" for purposes of R.C. §102.031(B) where both the Member and the legislative agent have an ownership interest in a limited liability partnership ("LLP") if (1) the Member maintains an ownership interest in the LLP of five percent or less; (2) the LLP is **not** the employer of a legislative agent as defined under R.C. §101.70 and; (3) the primary purpose of the LLP is **not** to advocate legislation.
3. Pursuant to R.C. §102.04(A), a Member of the General Assembly is prohibited from personally rendering any service, for compensation, in any matter before the General Assembly or any other governmental entity of the state, excluding the courts.

Jurisdiction and Question Presented:

Pursuant to §101.34 and §102.08 of the Ohio Revised Code, the Joint Legislative Ethics Committee is the advisory body to Members and employees of the General Assembly on questions pertaining to ethics, conflicts of interest, and financial disclosure. The Joint Legislative Ethics Committee advises Members and employees of the General Assembly on the following questions:

1. Is a Member of the General Assembly prohibited under R.C. §102.03(D) from voting on legislation that does not have a definite and particular effect on the Member's personal pecuniary interests?
2. Is a Member of the General Assembly a "business associate" for purposes of R.C. §102.031(B) where both the Member and a legislative agent have an ownership interest in an LLP if (1) the Member maintains an ownership interest in the LLP of five percent or less; (2) the LLP is **not**

the employer of a legislative agent as defined under R.C. §101.70 and; (3) the primary purpose of the LLP is **not** to advocate legislation?

3. Is a Member of the General Assembly prohibited under R.C. §102.04(A) from personally rendering any service, for compensation, in any matter before the General Assembly or any other governmental entity of the state, excluding the courts?

Background:

A Member of the General Assembly is a partner in an LLP. The Member maintains an ownership interest in the LLP of five percent or less. A legislative agent also maintains an ownership interest in the LLP; however, **the LLP is not the employer of a legislative agent as defined in Ohio's lobbying laws. It is the LLP's clients that are registered as the employers of the legislative agents associated with the LLP.**¹

Although there are legislative agents associated with the LLP, **the primary purpose of the LLP is not to advocate on legislation**, nor does the Member's practice area involve government relations or legislative advocacy. **In addition, the Member's share of each of the LLP's profit, loss and capital is five percent or less.** While the LLP's profits are allocated and distributed among the partners from time to time as determined by a committee of representative partners from the LLP, the Member has not been, is not currently and will not during the Member's time in the General Assembly serve on that committee. During the Member's term of office, he will not supervise or be supervised by any person associated with the LLP who is a legislative agent. In addition, the Member will not communicate with partners or employees of the LLP who are legislative agents or employers of legislative agents regarding legislation while performing his duties as a law firm partner.

Consideration of the Issues:

Pursuant to Ohio Revised Code §102.08, the Joint Legislative Ethics Committee has the authority to render an Advisory Opinion on an issue that has been publicly sought and that relates to a special set of circumstances involving ethics, conflicts of interest, or financial disclosure under §2921.42, §2921.43, or Chapter 102. of the Ohio Revised Code. The person to whom the opinion was directed or who is similarly situated may reasonably rely upon such opinion; and shall be immune from criminal prosecution, civil suits, or actions for removal from office or employment for a violation of §2921.42, §2921.43, or Chapter 102. of the O.R.C. based on the facts and circumstances covered by the opinion.

The Member does not have a 'substantial' interest pursuant to R.C. §102.03(D).

The Member is reminded of the general ethics provisions found within R.C. §102.03(D), (E) and (F) that prohibit a Member of the General Assembly from using the authority of the Member's

¹ See, R.C. §101.70(G) and R.C. §101.70 (H) defining 'employer' and 'engage' as used in Ohio's legislative lobbying laws. See, [JLEC Advisory Opinion 95-016](#) finding a Member of the General Assembly who was 'of counsel' for a law firm with several hundred clients was not an employee of a legislative agent or the employer of a legislative agent pursuant to 102.031(B) even though multiple clients of the law firm engaged legislative agents.

office to gain something of value for himself or any other organization or entity. R.C. §102.03(D), (E) and (F) provide:

(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.

(F) No person shall promise or give to a public official or employee 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.

Members of the General Assembly are prohibited from voting on legislative matters that will have a direct and particular effect on the Member's personal pecuniary interests.² Based on the Member's ownership interest in the LLP, the Member has the potential to receive a percentage (five percent or less) of the profits of the LLP. A portion of the LLP's distributed profits may originate from a legislative agent associated with the LLP.³ Arguably the revenue received from legislative agents associated with the LLP may impact the Member of the General Assembly by affecting the overall revenue of the LLP in which he has an ownership interest. However, in order for the prohibition under R.C. §102.03(D) to apply, the interest must be **substantial**.

In JLEC Advisory Opinion 99-002 the Committee concluded that a Member was not prohibited from voting on legislation affecting a company in which the Member owned five percent or less of the total and outstanding shares of stock. In making its determination that the Member's interest did not manifest a substantial and improper influence, the Committee looked to the five percent threshold found in R.C. 102.03(C). In JLEC Advisory Opinion 99-002 at pages 3-4 the Committee held:

Therefore, even though not directly on point, R.C. 102.03(C) does lend guidance as to whether an interest can be substantial enough to consider participation to be a conflict of interest. R.C. 102.03(C) provides:

No public official or employee shall participate within the scope of his duties as a public official or employee...in any license or rate-making proceeding that directly affects the license or rates of any person, partnership, trust, business trust, corporation, or association in which the public official or employee or his immediate family *owns or controls more than five per cent.* (emphasis added)

It would appear from this statute that where a public official owns less than five percent of the issued and outstanding stock, that amount is not considered substantial enough to

² See, JLEC Advisory Opinion 2007-001, and JLEC Advisory Opinion 99-002.

³ It should be noted that R.C. §101.77 prohibits compensation that is contingent in any way upon the passage, modification, or defeat of legislation.

cause a conflict of interest and therefore prohibit the official from participating.⁴ The Committee believes this quantitative percentage is a good threshold for determining *substantial* as that word is used in R.C. 102.03(D) for purposes of stock ownership.

Although not directly on point, the Member's ownership interest in the LLP is comparable to a situation where a Member has an ownership interest of five percent or less in a company's total and outstanding stock.⁵ Consequently, the Committee finds that in the limited circumstances presented: (1) LLP is **not** the employer of a legislative agent as defined by R.C. §101.70 and (2) the primary purpose of the LLP is not to advocate legislation; an ownership interest of five percent or less in the LLP is an appropriate threshold for determining whether the Member's interest is 'substantial' for purposes of R.C. §102.03(D). Consequently, the Member is not prohibited from voting on legislation which may impact LLPs generally, or the LLP's clients directly, as long as the legislation does not have **a definite or particular effect on the Member's personal pecuniary interests.**

R.C. §102.03(D) further prohibits the Member from using state resources in furtherance of the LLP or any other outside business interests. For example, a Member is prohibited from using his office or position in the General Assembly when conducting outside business.

The Member is not a 'business associate' for purposes of R.C. §102.031(B).

There is nothing within Ohio's Ethics Law or the Joint Legislative Code of Ethics that prohibits a Member of the General Assembly from having outside business interests; however, certain business relationships can impact a Member's ability to vote on legislation, depending upon the type of business relationship a Member of the General Assembly has with an entity or person. R.C. §102.031(B) prohibits Members of the General Assembly from voting on legislation being advocated on by a legislative agent if the Member's relationship with the legislative agent or the legislative agent's employer meets certain criteria. R.C. §102.031(B) provides:

No Member of the General Assembly shall vote on any legislation that the Member knows is then being actively advocated if the Member is one of the following with respect to a legislative agent or employer that is then actively advocating on that legislation:

- (1) An employee;
- (2) A business associate;
- (3) A person, other than an employee, who is hired under contract to perform certain services and that position involves a substantial and material exercise of administrative discretion in the formulation of public policy.

In JLEC Advisory Opinion 95-013 at page 3, the Committee found, "in accordance with R.C. 102.031(B), there are three types of relationships with an employer that might affect a Member's

⁴ See also R.C. 2921.42(B) which states that a person shall not be considered as having an interest in a public contract or the investment of public funds if, in addition to other requirements, the shares owned or controlled by that person do not exceed five per cent of the outstanding shares of the corporation.

⁵ See, JLEC Advisory Opinion 99-002.

ability to vote: (1) an employee; (2) a business associate; or (3) an administrative position.” The Committee declared, “‘employee’ does not include a Member of the General Assembly whose non-legislative position of employment does not involve the performance of or the authority to perform administrative or supervisory functions.” The Member has an ownership interest of five percent or less in the LLP; however, it is not the LLP but the LLP’s clients which are registered as the employers of legislative agents as defined in R.C. §101.70.⁶ Consequently, the Member does not have the authority to perform administrative or supervisory functions with respect to legislative agents or the employers of legislative agents, and is not classified as an ‘employee’ for purposes of R.C. §102.031(B)(1).

The Member is also not a ‘business associate’ for purposes of 102.031(B)(2). “Business associate” is defined as a person with whom a Member of the General Assembly is conducting or undertaking a financial transaction.⁷ The Committee held in JLEC Advisory Opinion 95-013 at page 3:

As used in R.C. 102.031, “financial transaction” has the same meaning as used in section 101.70 of the Revised Code. R.C. 101.70(I) provides:

“Financial transaction” means a transaction or activity that is conducted or undertaken for profit and arises from the joint ownership or the ownership or part ownership in common of any real or personal property or any commercial or business enterprise of whatever form or nature between the following:

- (1) A legislative agent, his employer, or a Member of the immediate family of the legislative agent or his employer; and
- (2) Any Member of the general assembly, any Member of the controlling board, the governor, the director of a department created under section 121.02 of the Revised Code, or any Member of the staff of a public officer or employee listed in division (I)(2) of this section.

“Financial transaction” does not include any transaction or activity described in division (I) of this section if it is available to the general public on the same terms, or if it is an offer or sale of securities to any person listed in division (I)(2) of this section that is governed by regulation D, 17 C.F.R. 2301.501 [2301.50.1] to 2301.508 [2301.50.8], adopted under the authority of the “Securities Act of 1933,” 48 Stat. 74, 15 U.S.C.A. and following, or that is governed by a comparable provision under state law.

⁶ See, JLEC Advisory Opinion 95-016 holding that a Member of the General Assembly who was “of counsel” to a law firm was not prohibited under R.C. 102.031(B) from voting on legislation actively advocated by a legislative agent on behalf of a client of the firm.

⁷ R.C. §102.031(A)(2).

The definition of financial transaction encompasses only those types of business relationships that involve joint or part ownership in an enterprise, as opposed to a simple contractual relationship between two entities for services.

Although the Member and the legislative agent share an ownership interest in the LLP, the LLP is neither the employer of a legislative agent as defined in R.C. §101.70, nor is the LLP's primary purpose to advocate on legislation. In addition, the Member's ownership interest in the LLP is five percent or less. Thus, in limited circumstances where: (1) the Member's ownership interest in the LLP is five percent or less; (2) the LLP is not the employer of a legislative agent as defined in R.C. §101.70 and; (3) the primary purpose of the LLP is not to advocate on legislation, the Committee finds the Member is not a 'business associate'.

In the limited circumstances presented, a Member of the General Assembly is not a 'business associate' for purposes of 102.031(B)(2); however, the Member should refrain from giving a greater level of access to the legislative agents associated with the LLP as compared to other legislative agents . Furthermore, the Member should not communicate with the legislative agents or the employers of the legislative agents regarding legislation when acting in his capacity as a law partner (i.e. not within the offices of the LLP).⁸

The Member is prohibited from personally rendering services pursuant to R.C. §102.04(A).

A Member is prohibited from personally rendering any service, for compensation in any matter before the General Assembly or any other governmental entity of the state, excluding the courts. However, a Member is not prohibited from performing certain ministerial functions including, but not limited to, the filing, or amendment of tax returns, applications for permits and licenses, incorporation papers, and other documents with state agencies.⁹ R.C. §102.04(A) provides:

Except as provided in division (D) of this section, no person elected or appointed to an office of or employed by the general assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts, shall receive or agree to receive directly or indirectly compensation other than from the agency with which he serves for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter that is before the general assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts.

While the Member is prohibited from representing the LLP or any other person or entity, for compensation, before the General Assembly or any other state agency, this prohibition does not apply to other partners or individuals associated with the LLP.

⁸ See, [JLEC Advisory Opinion 95-016](#) at page 5.

⁹ See, [JLEC Advisory Opinion 95-012](#).

Conclusion:

Accordingly the Committee finds and the Members are so advised:

- R.C. §102.03(D) prohibits a Member of the General Assembly from voting on legislation that has a definite and particular effect on the Member's personal pecuniary interests.
- A Member who shares an ownership interest with a legislative agent in an LLP is not a business associate for purposes of §102.031(B)(2) if (1) the Member's ownership interest in the LLP is five percent or less; (2) the LLP is not the employer of a legislative agent as defined in R.C. §101.70 and; (3) the primary purpose of the LLP is not to advocate legislation.
- R.C. §102.04(A) prohibits a Member from personally rendering any service, for compensation, in any matter before the General Assembly or any other governmental entity of the state, excluding the courts.

This advisory 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.