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THE JOINT LEGISLATIVE ETHICS COMMITTEE

Advisory Opinion 95-006  
April 6, 1995

Syllabus by the Committee:

- (1) A member of the General Assembly is not prohibited, pursuant to Chapter 102., from being associated with a law firm that is retained by the state of Ohio as special counsel;
- (2) R.C. 102.03(A)(1) limits a member's ability to represent clients in certain matters the member has personally participated in through the member's duties as a member of the General Assembly;
- (3) R.C. 102.03(B) prohibits a member of the General Assembly from disclosing or using, without appropriate authorization, any confidential information obtained as a member of the General Assembly during the conduct of the business of the law firm;
- (4) R.C. 102.03(D) prohibits a member or employee of the General Assembly from using his official authority or influence to secure anything of value, either for himself or for any other party, if the thing of value is of such a character as to manifest a substantial and improper influence upon him with respect to his official duties by impairing his objectivity and independence of judgment as a public official or employer;

(5) R.C. 102.04(A) prohibits a person who is elected or appointed to an office of, or employed by, any department or instrumentality of the state, from receiving, directly or indirectly, compensation, except from the agency with which he serves, for personally rendering any service in any matter before the General Assembly or any other governmental entity of the state;

(6) R.C. 2921.42 (A)(1) prohibits a member of the General Assembly from authorizing, or using the authority or influence of his office, to secure authorization of a public contract in which he has a definite and direct pecuniary or fiduciary interest;

(7) R.C. 2921.42(A)(4) prohibits a member of the General Assembly from having an interest in a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which he is connected.

Pursuant to Sections 101.34 and 102.08 of the Revised Code that direct the Joint Legislative Ethics Committee to act as an advisory body to the members and employees of the General Assembly on questions relating to ethics, conflicts of interest, and financial disclosure, the Joint Legislative Ethics Committee advises the members of the General Assembly on the following question: Can a member of the General Assembly be either a partner, associate, or "of counsel" in a law firm that is hired by the state of Ohio to be special counsel?

Nothing in the Ethics Law or the Legislative Code of Ethics *per se* prohibits a member from being associated with a law firm which performs work for the state of Ohio. However, several provisions contain prohibitions that may prevent the member from personally practicing in certain situations. Each of the sections shall be addressed individually.

First, R.C. 102.03(A)(1) limits a member's ability to represent clients in certain matters.

Division (A)(1) provides:

(A)(1) No present or former public official or employee shall, during his public employment or service or for twelve months thereafter, represent a client or act in

a representative capacity for any person on any matter in which he personally participated as a public official or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion.

Therefore, a member may not represent a client or act in a representative capacity on any matter in which he personally participated through his duties with the General Assembly. The prohibition in this provision indicates that the member should be cautious when dealing with state agencies.

Next, a member should be cautious not to disclose confidential information to members of his law firm or to clients. R.C. 102.03(B) states:

(B) No present or former public official or employee shall disclose or use, without appropriate authorization, any information acquired by him in the course of his official duties that is confidential because of statutory provisions, or that has been clearly designated to him 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.

Because a member deals with many state agencies, it appears probable that the member could encounter confidential information in the course of his official duties that either is confidential by statutory provision or has been clearly designated to him as confidential that could affect the law firm or its client with respect to those state agencies. The Committee cautions the member to avoid disclosing or using, without appropriate authorization, any confidential information obtained as a member of the General Assembly during the conduct of the business of the law firm.

Next, division (D) of Section 102.03 of the Revised Code limits the use of the member's influence and reads as follows:

(D) No public official or employee shall use or authorize the use of the authority or influence of his 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 him with respect to his duties.

R.C. 102.03(D) prohibits a public official or employee from using his official authority or influence to secure anything of value, either for himself or for any other party, if the thing of value is of such a character as to manifest a substantial and improper influence upon him with respect to his official duties by impairing his objectivity and independence of judgment as a public official or employer. Therefore, the member should avoid taking any actions that would result in their membership in the General Assembly being used to secure anything of value or the promise of anything of value, such as preferential consideration for a state or local government contract. Because the success of the law firm affects the member's income and status, the receipt of an item by the law firm will benefit the member. Additionally, the Committee cautions the member against using the authority or influence of the member's office to secure authorization of a contract.

Furthermore, the member is cautioned against using the member's status as a member of the General Assembly to influence the outcome of any case. A favorable outcome in an adjudicatory proceeding for the member's or law partner's client, in some circumstances, could be considered a thing of value. Therefore, the Committee advises the member to avoid taking actions that would result in the member's status as a member of the General Assembly being used to secure anything of value or the promise of anything of value for the member or the client.

Next, although the associates of a member's law firm may perform work for the state of Ohio, the member is prohibited from performing such work. R.C. 102.04(A) provides:

(A) 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.

R.C. 102.04(A) prohibits a person who is elected or appointed to an office of, or employed by, any department or instrumentality of the state, from receiving, directly or indirectly, compensation, except from the agency with which he serves, for personally rendering any service in any matter before the General Assembly or any other governmental entity of the state. Therefore, a member may not perform services such as advising, consulting, representing or the like which involves matters before the General Assembly or an agency, or a department, division, institution, instrumentality, board, commission, or bureau. Accordingly, the member may not perform any work on the cases awarded to the law firm from the state of Ohio where the services to be rendered are to be performed before one of the above entities.

R.C. 102.04(F) provides an exception to the prohibition found in 102.04(A) and reads as follows:

(F) This section shall not be construed to prohibit the performance of ministerial functions including, but not limited to, the filing, or amendment of tax returns, applications for permits and licenses, incorporation papers, and other documents.

Therefore, a member is not prohibited by R.C. 102.04(A) in performing these types of ministerial functions.

Lastly, R.C. 2921.42 imposes prohibitions upon public officials with regard to public contracts and reads as follows:

(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;

\* \* \*

(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

A member of the General Assembly is a "public official" who is subject to the prohibitions imposed by R.C. 2921.42. "Public contract" includes the purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of a political subdivision. See R.C. 2921.42(F)(1).

R.C. 2921.42 (A)(1) prohibits a public official from authorizing, or using the authority or influence of his office, to secure authorization of a public contract in which he has a definite and direct pecuniary or fiduciary interest. Therefore, the Committee advises the member to avoid using his membership in the General Assembly to secure any state contracts.

Division (A)(4) of Section 2921.42 prohibits a public official from having an interest in a public contract entered into by or for the use of "the political subdivision or governmental agency or instrumentality with which he is connected." Therefore, the Committee advises the member and his law firm to avoid any contracts with the General Assembly.

Accordingly, the Committee finds, and the member is so advised, that the member is not prohibited, pursuant to Chapter 102., from being associated with a law firm that is retained by the state of Ohio as special counsel. However the member is (1) limited in his ability to represent clients in certain matters the member has personally participated in through the member's duties as a member of the General Assembly; (2) prohibited from disclosing or using, without appropriate authorization, any confidential information obtained as a member of the General Assembly during the conduct of the business of the law firm; (3) prohibited from using his official authority or influence to secure anything of value, either for himself or for any other party, if the thing of value is of such a character as to manifest a substantial and improper influence upon him with respect to his official duties by impairing his objectivity and independence of judgment as a public official or employer; (4) prohibited from receiving, directly or indirectly, compensation, except from the agency with which he serves, for personally rendering any service in any matter before the General Assembly or any other governmental entity of the state; (5) prohibited from authorizing, or using the authority or influence of his office, to secure authorization of a public contract in which he has a definite and direct pecuniary or fiduciary interest; and (6) from having an interest in a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which he is connected.



William G. Batchelder, Chairman  
Joint Legislative Ethics Committee