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THE JOINT LEGISLATIVE ETHICS COMMITTEE

Advisory Opinion 95-013
September 27, 1995

Syllabus by the Committee:

- (1) A member of the General Assembly, through the member's Subchapter S corporation, is not prohibited from selling services to a private corporation; and
- (2) A contract for the performance of services does not fall within the definition of financial transaction; therefore, a member of the General Assembly is not a business associate of an employer of a legislative agent where the member's company and the employer have entered into a service contract; and
- (3) Pursuant to R.C. 102.031(B), a member of the General Assembly is not prohibited from voting on any legislation that is being actively advocated by an employer of a legislative agent if the member is not an employee, business associate, or in a position which involves a substantial and material exercise of administrative discretion in the formulation of public policy.

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: Where a member of the General Assembly is a minority shareholder in a Subchapter S corporation, can the member's corporation accept a contract for services from another corporation which is the employer of a legislative agent?

The member is a minority shareholder in a Subchapter S corporation. A Subchapter S corporation is a small business corporation permitted to be taxed as if it were an individual proprietorship. I.R.C. § 1371 *et seq.* Of major significance is the fact that Subchapter S status usually avoids corporate income tax, and corporate losses can be claimed by the shareholders. Here, the S corporation provides recruiting services for other companies. A second corporation, which is also the employer of a legislative agent, is seeking to hire the S corporation for recruiting services.

Two prohibitions exist with respect to the selling of goods and services by members of the General Assembly. Members of the General Assembly are prohibited from receiving or agreeing to receive, directly or indirectly, compensation other than from the General Assembly for any personal services rendered by the member in any case, proceeding, application or other matter before agencies of the state. R.C. 102.04(A). Members of the General Assembly are also prohibited from selling or agreeing to sell, except through competitive bidding, any goods or services to state agencies. R.C. 102.02(B). The common thread between these two sections is that it must involve a state agency. Here, the S corporation is attempting to sell a service to a private corporation, not a state agency. Therefore, the member, through his corporation, is not prohibited from selling recruiting services to a private corporation.

As noted above, the private corporation is an employer of a legislative agent which necessarily implicates R.C. 102.031(B) which provides:

(B) No member of the general assembly shall vote on any legislation that he knows is then being actively advocated if he 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 such position involves a substantial and material exercise of administrative discretion in the formulation of public policy.

Therefore, in accordance with R.C. 102.031(B), there are three types of relationships with an employer that may affect a member's ability to vote: (1) an employee; (2) a business associate; or (3) an administrative position. For purposes of R.C. 102.031(B), "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. R.C. 102.031(A)(4) Based upon this definition and the facts presented, the member would not be an employee of the second corporation.

Furthermore, from the facts presented, the member would not be in a position which involved a substantial and material exercise of administrative discretion in the formulation of public policy. Therefore, it must be determined whether the member would be a "business associate" of the second corporation. "Business associate" is defined as a person with whom a member of the General Assembly is conducting or undertaking a financial transaction. R.C. 102.031(A)(2). 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.

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. Initially, it must be noted the contract will be between the S corporation and the second corporation, the member is not an actual party to the contract. Furthermore, as stated above, a simple contract for the purchase of services does not fall within the confines of the definition of financial transaction. Therefore, the member would not be a business associate of the second corporation. Thus, since the member does not fall within the purview of R.C. 102.031(B), the member would be not prohibited from voting on any legislation that is being actively advocated by the second corporation.

However, the member is reminded of the prohibition in R.C. 102.03(D) which states "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." Therefore, R.C. 102.03(D) prohibits the use of the member's authority to secure anything of value of substantial and improper character for the member, his company, or the second corporation.

Accordingly, the Joint Legislative Ethics Committee finds, and the members are so advised, that (1) A member of the General Assembly, through the member's Subchapter S corporation, is not prohibited from selling services to a private corporation; (2) A contract for the performance of services does not fall within the definition of financial transaction; therefore, a member of the General Assembly is not a business associate of an employer of a legislative agent where the member's company and the employer have entered into a service contract; and (3) Pursuant to R.C. 102.031(B), a member of the General Assembly is not prohibited from voting on any legislation that is being actively advocated by an employer of a legislative agent if the member is not an employee, business associate, or in a position which involves a substantial and material exercise of administrative discretion in the formulation of public policy.

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.



William G. Batchelder, Chairman
Joint Legislative Ethics Committee