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THE JOINT LEGISLATIVE ETHICS COMMITTEE

Advisory Opinion 95-014
September 27, 1995

Syllabus by the Committee:

- (1) A member of the General Assembly is not prohibited from serving on the board of directors, as treasurer, or as chairman of a committee for a company which receives Medicaid reimbursements;
- (2) A member of the General Assembly, as a compensated board member, is prohibited from rendering any service personally before state entities;
- (3) A member of the General Assembly 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 in violation of R.C. 102.03(D); and
- (4) R.C. 102.02(D) prohibits a public official or employee from participating in his official capacity in matters that have a definite and particular effect on his personal pecuniary interests where the interests could impair the official's objectivity.

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: Whether the Ohio Ethics Law and related statutes prohibit members of the

General Assembly from serving on a board of directors, as treasurer, and as chairman of the Finance Committee for a company which receives Medicaid reimbursements?

You have stated the company is a for-profit company and you are compensated only for the board of directors position. No provision of the Revised Code specifically prohibits a member of the General Assembly from serving as a member of a board of directors, a treasurer, or a committee chairman of a company which receives Medicaid reimbursements. However, certain provisions are relevant to potential conflicts of interest that could result from a member serving in such positions.

Division (A) of Section 102.04 of the Revised Code 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.

"Compensation" is defined in R.C. 102.01(A) as money, thing of value, or financial benefit. It does not include reimbursement for actual and necessary expenses incurred in the performance of official duties. You have stated you will not be compensated for the positions of treasurer and chairman; under such conditions, R.C. 102.04(A) does not prohibit you from rendering any service personally before state entities. However, the member is cautioned that the term "compensation," as used in R.C. 102.04(A), includes any financial benefit and that ownership of stock or other potential relationships might result in the member receiving benefits indirectly as a result of personally rendering services on behalf of the company. As for the board member position, since you are compensated, you are prohibited from rendering any service personally before state entities on behalf of the board of directors.

R.C. 102.03(D) 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.


Although not directly on point, this Committee has on several occasions advised the member that they 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. When serving on the board or in any other capacity, the member should avoid using his membership in the General Assembly in any of his dealings with the other board members or customers of the company to secure anything of value for either himself or the company.

R.C. 102.03 also prohibits a public official or employee from participating in his official capacity in matters that have a definite and particular effect on his personal pecuniary interests where the interests could impair the official's objectivity. For example, R.C. 102.03(D) would prohibit a member of the General Assembly from voting, discussing, deliberating, or otherwise using his position or authority, formally or informally, on any matter before the General Assembly that would have a *direct impact* on property owned by the member, a liquor license held by the member, or the salary or benefits he receives from the member's private employment. Here, if pending legislation before the General Assembly will impact your private employer differently than other companies similarly situated you would be prohibited from voting, discussing, or deliberating upon that pending legislation. In matters before the General Assembly involving your private employer where there is no definite or particular effect on your personal pecuniary interests you would not be prohibited from participating. Therefore, the member is cautioned to avoid participating in matters where the benefit to the member's private employer is selective, differential, or in disproportion to the benefit provided to other HMO's in the state.

Accordingly, the Committee finds, and the member is so advised, that: (1) A member of the General Assembly is not prohibited from serving on the board of directors, as treasurer, or as chairman of a committee for a company which receives Medicaid reimbursements; (3) A member of the General Assembly, as a compensated board member, is prohibited from rendering any

service personally before state entities; (4) A member of the General Assembly 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 in violation of R.C. 102.03(D); and (5) R.C. 102.02(D) prohibits a public official or employee from participating in his official capacity in matters that have a definite and particular effect on his personal pecuniary interests where the interests could impair the official's objectivity.

This Advisory Opinion is based upon 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