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**THE JOINT LEGISLATIVE ETHICS COMMITTEE**

Advisory Opinion 95-016  
November 15, 1995

**Syllabus by the Committee:**

- (1) A member of the General Assembly is not prohibited from being associated with a law firm that has members of the law firm who are registered legislative agents or employers of legislative agents;
- (2) 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 a legislative agent or 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 of the law firm.

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 questions: (1) Can a member of the General Assembly be associated with a law firm that has members who are registered legislative agents? and (2) If so, can the member vote on legislation which is being actively advocated by a member of the law firm?

The member is "of counsel" to a law firm with seventeen professionals. The member has no administrative or supervisory responsibilities in terms of the firm management and does not hold an equity position with the firm or share in the firm profits. The member is compensated by salary and a percentage of the member's personal billings over a certain level. The law firm is retained by several hundred clients. Of those clients, some have engaged certain members of the law firm as legislative agents. Those clients who are employers of the legislative agents were associated with the law firm prior to the member's relationship with the firm.

There are no provisions in the Revised Code that restrict a member's association with a law firm which either employs a legislative agent or has members of the law firm who are legislative agents. In fact, it appears the intent of the General Assembly was to assume these types of situations would occur. With the passage of H.B. 492, the General Assembly enacted R.C. 102.031 which deals with conflicts of interest where a member is associated with a legislative agent or their employer. Therefore, a member may be associated with a law firm that has members of the law firm who are registered legislative agents or employers of legislative agents.

However, pursuant to R.C. 102.031 certain voting prohibitions may exist depending upon the particular circumstances. R.C. 102.031(B) 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.

This Committee, in Advisory Opinion 95-013, stated, "in accordance with R.C. 102.031(B), there are three types of relationships with an employer [or legislative agent] that may affect a member's ability to vote: (1) an employee; (2) a business associate; or (3) an administrative position." JLEC Advisory Opinion 95-013 at page 3. Therefore, it must be determined whether the member maintains one of the three types of relationships with the law firm.

The member is an employee of the law firm in the sense that he receives a salary for services rendered. However, 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). The member has stated his position has no administrative or supervisory responsibilities with regard to the firm management. Based upon these facts, the member is not an "employee" of a legislative agent or employer of a legislative agent.

"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). In Advisory Opinion 95-013, the Committee stated:

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. JLEC Advisory Opinion 95-013 at page 3.

Therefore, based upon the facts presented, the member would not be a "business associate" of a legislative agent or the employer of a legislative agent.

The last category encompasses "[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. Again, 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 of the law firm.

Since the member is not an employee, business associate, or in an administrative position, he does not come within the purview of R.C. 102.031(B); therefore, he is not prohibited, under this section, from voting on legislation that is being actively advocated by a member in the law firm.

Furthermore, the member is reminded of Section 4 of the Legislative Code of Ethics which provides:

(A) When a member has reason to believe that he has a substantial personal interest in legislation, he may request permission of the chair to abstain from voting on the legislation and may state his reason for the request. The request shall be granted by the chair. The request and permission to abstain shall be entered in the House or Senate Journal, as it appropriate.

Hence, if the factual circumstances change, the member may be prohibited from voting not only under R.C. 102.031(B), but also pursuant to Section 4(A).

Lastly, the Committee would caution the member to avoid any communication with members of the law firm who are either legislative agents or employers of a legislative agent regarding the legislation outside the confines of the General Assembly. For example, the member should avoid discussing the legislation with the members in his law firm office. Additionally, the member should not be more accessible to the law firm members than he is to others advocating the legislation simply because of his relationship with the law firm.

Accordingly, the Committee finds and the member is so advised: (1) A member of the General Assembly is not prohibited from being associated with a law firm that has members of the law firm who are registered legislative agents or employers of legislative agents and (2) 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 a legislative agent or 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 of the law firm.

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