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**THE JOINT LEGISLATIVE ETHICS COMMITTEE**

Advisory Opinion 96-001  
January 25, 1996

**Syllabus by the Committee:**

- (1) A member of the General Assembly, through the member's corporation, is not prohibited from selling services to a public utility company;
- (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.

**Jurisdiction and Question Presented**

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 perform consulting work for a public utility company?

Background

The member is the sole owner of a company which provides, among other things, consulting services. A public utility company is seeking to contract with the member's company for consulting services wherein the member would be performing the services on behalf of his company. The contract would consist of developing and implementing a strategic plan for the utility company's 10 year rate reduction proposal and would entail working with local government political leaders, school officials and opinion leaders regarding the proposal and its benefits to their respective communities.

The contract would also involve assisting in developing local community energy savings and efficiency improvements with a total of \$10 million in grants, loans, and leases available for these projects. Lastly, the member would assist in implementing an additional \$5 million to enhance business development for the utility company's service area. The public utility company involved is an employer of a legislative agent.

Consideration of the Issues

The issues raised in this request were recently addressed in JLEC Advisory Op. 95-013. Pursuant to R.C. 102.08, when the Committee renders an Advisory Opinion that has been publicly sought and that relates to a special set of circumstances involving ethics, conflicts of interest, or financial disclosure under Chapter 102, or section 2921.42 or 2921.43 of the Revised Code, the person to whom the opinion was directed *or who was similarly situated* may reasonably rely upon such opinion and shall be immune from criminal prosecutions, civil suits, or actions for removal from his office or position of employment for a violation of Chapter 102, or section 2921.42 or 2921.43 of the Revised Code based on the facts and circumstances covered by the opinion. Therefore, the member is advised to review JLEC Advisory Op. 95-013. However, the legal analysis in Opinion 95-013 will be applied to the facts presented herein.

R.C. 102.04

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. 102.03(B). The common thread between these two sections is that it must involve a state agency. Here, the member'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 consulting services to the public utility company.

R.C. 102.031

As noted above, the public utility company 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 public utility company. 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 public utility company.

"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 held in JLEC Advisory Op. 95-013, "[t]he 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." Therefore, the member would not be a business associate of the public utility company. Thus, since the member does not fall within the purview of R.C. 102.031(B), the member is not prohibited from voting on any legislation that is being actively advocated by the public utility company.

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 public utility company.

#### Conclusion

Accordingly, the Joint Legislative Ethics Committee finds, and the member is so advised, that (1) A member of the General Assembly, through the member's corporation, is not prohibited from selling services to a public utility company; (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.



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William G. Batchelder, Chairman  
Joint Legislative Ethics Committee