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THE JOINT LEGISLATIVE ETHICS COMMITTEE

Advisory Opinion 99-002
May 11, 1999

Syllabus by the Committee:

- (1) R.C. 102.03(D) does not prohibit a member of the General Assembly from voting on legislation which specifically grants money to a company in which the member owns less than five percent of the issued and outstanding stock of the company; and
- (2) R.C. 102.03(D) does not prohibit a member of the General Assembly from voting on legislation where the legislation does not have a definite and particular effect on the member's personal pecuniary interests.

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 and employees of the General Assembly on the following question: Can a member of the General Assembly vote on legislation where the member owns stock in a company affected by the legislation?

Background

The member owns shares of common stock in an electric company; the member's ownership represents less than five percent of the total issued and outstanding shares. Currently there is a bill pending which deals with the deregulation of electric companies. One facet of this

bill calls for shopping credits for specific electric companies enumerated in the bill, thus directly affecting the financial condition of the electric company. One of the electric companies specifically listed is the company in which the member owns stock. In addition to the current pending bill, there is also a proposed substitute bill/amendment. The substitute bill/amendment does not provide for a shopping credit to the companies, but gives the authority to the Public Utilities Commission of Ohio ("PUCO") to regulate what monies or transition revenues, if any, are to be paid to the various electric companies. The General Assembly would establish criteria that the PUCO would be required to follow.

Consideration of the Issues

Current Bill

R.C. 102.03(D)

There are several statutory provisions that limit a member's ability to participate in legislative matters where the member has a personal interest. Of import here is R.C. 102.03(D). The general ethics provision found in R.C. 102.03(D) prohibit a member from using the member's authority to gain something of value. R.C. 102.03(D) provides:

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.

The purpose of R.C. 102.03(D) is to prohibit the use by a member of his or her position to obtain special benefits that are not part of that member's regular or customary compensation, or not normally incident to the holding of that official position. With respect to a member's ability to vote, the Committee interpreted R.C. 102.03(D) in Advisory Op. 95-014, the Committee held:

R.C. 102.03...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. JLEC Advisory Op. 95-014 at page 3.

Therefore, a member is prohibited from participating in legislative matters where the outcome has a definite and particular effect on the member's personal pecuniary interests. It is fair to assume the impact of this legislation may affect the member-shareholder, by affecting the revenue of the company. However, is this pecuniary interest *substantial* as required by R.C. 102.03(D)? In order to be prohibited, the thing of value must be of such a character as to manifest a substantial and improper influence upon a member with respect to the member's duties. The word substantial is not specifically defined; however, the Committee believes R.C. 102.03(C) can give guidance as to whether or not the benefit can be considered substantial.

R.C. 102.03(C)

As noted above, the current legislation mandates the payment of certain stranded costs to the utility company in which the member owns stock. Although the legislation is not a rate-making proceeding, the outcome of the legislation is to effectively set the rate for the electric companies. Therefore, even though not directly on point, R.C. 102.03(C) does lend guidance as to whether an interest can be substantial enough to consider participation to be a conflict of interest. R.C. 102.03(C) provides:

No public official or employee shall participate within the scope of his duties as a public official or employee...in any license or rate-making proceeding that directly affects the license or rates of any person, partnership, trust, business trust, corporation, or association in which the public official or employee or his immediate family *owns or controls more than five per cent.* (emphasis added)

It would appear from this statute that where a public official owns less than five percent of the issued and outstanding stock, that amount is not considered substantial enough to cause a

conflict of interest and therefore prohibit the official from participating¹. The Committee believes this quantitative percentage is a good threshold for determining *substantial* as that word is used in R.C. 102.03(D) for purposes of stock ownership. Accordingly, R.C. 102.03(D) does not prohibit a member of the General Assembly from voting on legislation which specifically grants money to a company in which the member owns less than five percent of the issued and outstanding stock of the company.

Substitute Bill/Amendment

The proposed substitute bill/amendment would provide for a regulatory scheme as opposed to the shopping credit method used in the current bill. As noted above, the substitute bill/amendment would authorize the PUCO to exclusively regulate the electric companies, and determine what costs, if any, will be paid to the companies. Hence, under the substitute bill/amendment, no direct revenue would be authorized by the General Assembly to the electric companies.

As stated previously, pursuant to R.C. 102.03(D), a member is prohibited from participating in legislative matters where the outcome has a definite and particular effect on the member's personal pecuniary interests. Unlike where direct revenue was to be received by the member-shareholder's company in the current bill, in the substitute bill/amendment, no such direct revenue would be provided and in fact may never be realized unless various criteria are met and payment is authorized by the PUCO. Therefore, passage of the substitute bill/amendment would not have a direct impact on the member-shareholder and the member

¹ See also, R.C. 2921.42(B) which states a person shall not be considered as having an interest in a public contract or the investment of public funds if, in addition to other requirements, the shares owned or controlled by that person do not exceed five per cent of the outstanding shares of the corporation.

would not be prohibited from voting on the substitute bill/amendment. Accordingly, R.C. 102.03(D) does not prohibit a member of the General Assembly from voting on legislation where the legislation does not have a definite and particular effect on the member's personal pecuniary interests.

Lastly, the Committee further advises the member that, notwithstanding this opinion, if the member feels that the legislative matter is too directly related to the interests of the member to allow the member to vote in good conscience, the member may, under Section 4 of the Legislative Code of Ethics request and receive permission to abstain from voting on legislation as follows:

A member who has reason to believe that the member has a substantial personal interest in legislation, may request permission of the chair to abstain from voting on the legislation and may state the member's reason for the request. The request shall be granted by the chair pursuant to the rules of the member's respective chamber of the General Assembly. The request and permission to abstain shall be entered in the House or Senate Journal, as it appropriate.

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.

Conclusion

Accordingly, the Committee finds and the members are so advised, (1) R.C. 102.03(D) does not prohibit a member of the General Assembly from voting on legislation which specifically grants money to a company in which the member owns less than five percent of the issued and outstanding stock of the company; and (2) R.C. 102.03(D) does not prohibit a member of the General Assembly from voting on legislation where the legislation does not have a definite and particular effect on the member's personal pecuniary interests.

Jo Ann Davidson, Chairman
Joint Legislative Ethics Committee