

VILLAGE OF JEFFERSON COUNCIL MEETING

January 16, 2024

Meeting called to order by Mayor Chiacchiero.

Pledge of Allegiance:

Moment of Silence:

Opening Prayer: Erin Valenti of CSR Ministries

Motion Councilperson Sekanina by to appoint Councilperson Dreier to take minutes in the absence of the Clerk/Treasurer.

2nd

Roll: All yea, motion carried

Roll call of Council Dreier, Febel, Martuccio, Roderick, Sekanina, Orvos

Corrections or Additions to the Agenda:

Additions added to Council point of order See attachments.

Add executive session before the Tax Review nomination.

Minutes: Approval/Addition/Correction

Motion by Councilperson Febel to approve the Council Meeting

Minutes of January 2, 2024.

2nd

Roll: All yea, motion carried

Motion by Councilperson Roderick to accept the Jefferson Cemetery Trustees Meeting Minutes of December 4, 2023

2nd

Roll: All yea, motion carried

VILLAGE OF JEFFERSON COUNCIL MEETING

January 16, 2024

Motion by Councilperson Febel to accept the Jefferson Emergency Rescue District Meeting Minutes of January 10, 2024

2nd

Roll: All yea, motion carried

Visitor's Comments (five-minute limit per council rule #13)

None

Also present:

Corrina Galletti, Megan Karmazin, Laura Gozelanczyk, Jon Karmizin, Michael Gozelanczyk, Richard Gozelanczyk, Adam Gozelanczyk, Patrolman Greg Lachey, John Szewczyk, Tom Lachey, Devin Chiacchiero, Diane Mackensen, Kelly Butcher, Pat Bradek, Eric Massie and Stephanie Wessell of the Gazette.

DEPARTMENTS

Administrator

Village Administrator's report for the period ending January 11, 2024.

Projects update:

Project		Status	Vendor	Grant/Loan		Total Cost
ACTIVE PROJECTS	Project #					
WWTP Renovations	OPWC – R37	Submitted to DOD/EPA Resubmitting to OPWC – R37	CT Consulting	Engineering grant \$90,000		\$1,250,000
WWTP Clarifier Improvement	OPWC – R38	Starting Engineering 01/01/2024	CT Consulting	\$207,500 Grant \$50,000 Loan		\$515,000

**VILLAGE OF JEFFERSON
COUNCIL MEETING**

January 16, 2024

Street Dept.

- All equipment is ready for snow-plowing roads and sidewalks.
- The street department is using this time between snowfalls to cut the berms back to alleviate the standing water on roads.
- All Christmas decorations are put away and now Installing new outlet covers on each light pole to help the Christmas lights from shutting off each time we have wet weather next year.
- Aqua is working its way down Market Street tying in water line into the new line installed last year.

Recreation Department:

- Gym remodel is underway this week and should provide the extra space needed as well as creating a rear door entrance for after-hours members.
- Newspaper Ad went out for the new part-time custodian and closes on the 19th

Wastewater Treatment Plant:

- Plant operations are running at acceptable levels.
- As part of our ongoing program in conjunction with the EPA The village has implemented the new automatic wastewater sampler to help further narrow down high Mercury and Copper levels.

Police:

**VILLAGE OF JEFFERSON
COUNCIL MEETING**

January 16, 2024

Fire:

Other Items:

- We ask all departments to be mindful of all non-essential expenses during the temporary budget.

Address	Violation Type	Status	Comments
110 Uselma Av.	Junk in the Yard		Items have been removed.
36 N. Market ST.	Junk Vehicles		Owners in the process of removing or fixing

Clerk /Treasurer Fisher

Payroll Report/Special Pay Report

Deputy Chief Schor

FYI: 2023 Year End Report

Chief Lachey

FYI: Fourth Quarter Fire Reports

FYI: 2023 Fire Reports Entire Year

COMMITTEE REPORTS

**VILLAGE OF JEFFERSON
COUNCIL MEETING**

January 16, 2024

Building and Lands

No Report

Forestry

No report

Finance

Motion by Councilperson Sekanina for the Third Reading of Ordinance No. 23-O-3325

2nd

Roll: All yea, motion carried

Ordinance No. 23-O-3325

An Ordinance setting forth the pay for Salaried, Hourly, and Part-Time Employees of the Village of Jefferson, Ohio

Motion by Councilperson Sekanina to Adopt Ordinance No. 2023-O-3325

2nd

Roll: All yea, motion carried

Recreation

No Report

VILLAGE OF JEFFERSON COUNCIL MEETING

January 16, 2024

Safety

Motion by Councilperson Febel to approve Deputy Chief Schor's recommendation to move Greg Lachey off his probation status since he completed his six-month step increase at the Sergeant's position. And receive a \$.50 per hour pay increase per the wage Ordinance effective January 22, 2024.

2nd

Roll: All yea, motion carried

Utilities/Wastewater Treatment/ Service

No Report

Mayor

Motion by Councilperson Martuccio to go into executive session at 8:02 p.m. regarding the appointment of the citizen to the Tax review Board with action after the executive session.

2nd

Roll: All yea, motion carried

Motion by Councilperson Febel to go out of executive session at 8:29 p.m.

2nd

Roll: All yea, motion carried

Motion by Councilperson Febel to go back into regular session at 8:30 p.m.

2nd

Roll: All yea, motion carried

Motion by councilperson Martuccio to table the Mayor's recommendation to replace citizen Jon Glink and appoint Brian Diehl to the Tax Review Board to a three-year term expiring 12/31/26.

2nd

Roll: All yea, motion carried

**VILLAGE OF JEFFERSON
COUNCIL MEETING**

January 16, 2024

Motion Tabled

Motion to accept the Mayor's recommendation to replace citizen Jon Glink and appoint Brian Diehl to the Tax Review Board to a three-year term expiring 12/31/26.

OLD BUSINESS/NEW BUSINESS

Visitor's Comments (five-minute limit per council rule #13)

None

CORRESPONDENCE

None

MEETINGS

FINANCE COMMITTEE MEETING

Monday February 5, 2024

3:15 p.m.

Town Hall

Discussion: Final 2024 Budget

Motion by Councilperson Martuccio to make the memo dated 06/23/2023 from Mayor Diehl to Administrator Martuccio titles Disciplinary Action, Written Warning a public record, in the interest of transparency and accountability.

2nd

Roll: All yea, motion carried

Motion by Councilperson Martuccio to waive the attorney -Client privilege covering the request only, submitted by Mayor Diehl to the Solicitor, regarding elected officials and property ownership, in the interest of transparency and accountability.

2nd

Roll: All yea, motion carried

VILLAGE OF JEFFERSON COUNCIL MEETING

January 16, 2024

Motion by Councilperson Martuccio to direct the Clerk Treasurer in her capacity of Public Records Custodian to work with the Solicitor on updating the records retention policies necessary to implement Council Meeting Audio and Video Recording by the next Council Meeting scheduled for February 5, 2024, in the interest of transparency and accountability. If the necessary updates cannot be in place on or before February 5, 2024, due to time constraints, the Clerk Treasurer and the solicitor shall make every effort to have the above policies in place and updated as soon as possible.

2nd

Roll: All yea, motion carried

Motion by Councilperson Martuccio to direct the Administrator and the Mayor to implement Council Meetings Audio and Video Recording by the next Council Meeting Scheduled for February 5, 2024 in the interest of transparency and accountability. A Link to all such Council Meeting Recordings shall be maintained on our Jefferson Village website for the public to access at any time in the future. If the Implementation above cannot be in place by February 5, 2024, due to time constraints, the Administrator and the Mayor shall make every effort to have the Council Meetings Audio and Video Recording system functioning and in place as soon as possible.

2nd

Roll: Dreier nea, Febel yea, Martuccio yea, Roderick nea, Sekanina nea, Orvos yea.

Three yea's and three nea's time vote Mayor voted nea. Broke the tie and motions failed.

**VILLAGE OF JEFFERSON
COUNCIL MEETING**

January 16, 2024

ADJOURN

Motion by Councilperson Febel to adjourn the Council Meeting.
2nd

Roll: All yea, motion carried.

Meeting adjourned at 9:17 p.m.

Submitted by,

Katy Dreier, Acting Clerk of Council

AGENDA
Jefferson Village Council
Order of Business

Date: Tuesday, January 16, 2024.

Regular Meeting 7:30 p.m.
Next Ordinance No. 24-(R/O) 3326

Meeting Called to Order by: Mayor Chiacchiero

Pledge of Allegiance:

Moment of Silence

Opening Prayer:

Motion by to appoint Councilperson 142 to take
minutes in the absence of the Clerk/Treasurer,
Motion: SS Second: PM? Roll: ✓

Roll Call of Council: Dreier, Febel, Martuccio, Roderick, Sekanina, Orvos

✓ **Corrections or Additions to the Agenda**

Minutes: Addition/Correction

Motion to approve the Council Meeting Minutes of
January 2, 2024.

Motion: F Second: R? Roll: ✓

Motion to accept the Jefferson Cemetery Trustees
Meeting Minutes of December 4, 2023.

Motion: R Second: O Roll: ✓

Motion to accept the Jefferson Emergency Rescue
District Meeting Minutes of January 10
, 2023.

Motion: F Second: O Roll: ✓

Visitor's Comments (five-minute limit per council rule #13) *none*

DEPARTMENTS

Administrator

Administrator Report

Clerk/Treasurer Fisher

Payroll Report/Special Pay Report

Deputy Chief Schor

FYI: 2023 Year End Report

Chief Lachev

FYI: Fourth Quarter Fire Reports

FYI: 2023 Fire Reports Entire Year

COMMITTEE REPORTS

✓ **Building and Lands**

Dreier/Sekanina

No Report

✓ **Forestry**

Martuccio/Febel

No Report

✓ **Finance**

Sekanina/Dreier

Motion for the Third Reading of Ordinance No. 23-O-3325

An Ordinance setting forth the pay for Salaried, Hourly, and Part-Time Employees of the Village of Jefferson, Ohio

Motion: S Second: D ? Roll: ✓

Motion to Adopt Ordinance No. 2023-O-3325

Motion: S Second: D ? Roll: ✓

✓ **Recreation**

Roderick/ Martuccio

No Report

✓ **Safety**

Febel /Orvos

Motion to approve Deputy Chief Schor's recommendation to move Greg Lachey off his probation status since he completed his six-month step increase at the Sergeant's position. And receive a \$.50 per hour pay increase per the wage Ordinance effective January 22, 2024.

Motion: F Second: O ? Roll: ✓

✓ **Utilities/Wastewater Treatment/**

Service

Orvos/Roderick

No Report

Mayor

GARDEN CLUB
SENIORS

Executive Session. w/ action

Motion M O roll ✓ 8:02pm into reg. session
8:29 out of session
8:30pm into reg. session

Board of Tax Review

NOTED A

Motion to accept the Mayor's recommendation to replace citizen Jon Glink and appoint Brian Diehl to the Tax Review Board to a three-year term expiring 12/31/26.

Motion: _____ Second: _____ ? Roll: _____

✓ OLD BUSINESS/
NEW BUSINESS

Motion to table

PM F. roll ✓

FYI: Andrews & Pontius LLC

Visitor's Comments (five-minute limit per council rule #13)

none

CORRESPONDENCE

MEETINGS

FINANCE COMMITTEE MEETING

Monday February 5, 2024,

3:15 p.m.

Town Hall

Discussion: Final 2024 Budget

Send notice out

Call it this

Joint 6:00pm. BNL.
Steve 6:30pm Safety.
Hanna

Councilperson Martuccio asked if a Joint Committee

Meeting be set up for the following Committees.

Forestry

Building Lands

Finance

The discussion would be discussing the Village's sidewalk program.

(NO) SPedden
Breier
(Sekarina)
- mayor (NO)
Mark
Orms
Febel (YES)

② Motion 6/23/22 Deal to Admin. public record

PM.

(KO)

roll.

✓

Motion

③ Motion

PM

KO.

roll

✓

" passes

④ Motion

PM

K.O.

roll

✓

" " 4

⑤ Motion

PM

K.O.

Roll.

Does not pass

Meeting 1-16-24

(PM)-additions added to Council
point to order - (see attachment)

-add an executive session

Street Dept

plowing, cutting brims on road to help w/ snow
Christmas lights down - Anna capping off
Gym remodel - should be complete soon.
1st close on custodian add

WWT - mining well - water sampler to monitor
mercury

Junk cars. 110 N Selma - was removed
36 Market - removed
Thanks to Police Dept.

(Key points)
overview Chief Schor - (Reports were emailed to Patty Fisher)
Body cameras - dash cams & back seat +
rear mics. video for entire time.

CARS - Black + Red w/ a Falcon
11,000 forfeited National Night Out
Radar units + antennas, updated phone sys
shredded outdated stuff - K9 Rugger + unit. paid by
Axtell - fully staffed + Tim Blon at schools
334 full reports (total) in 2023. Gave 2023 Review of
the calls.

Mayor - Garden Club looking for members. Look out for
our Seniors - check in on them. Considering warming & Center

Adjourn: Motion: F

Time: 9:17pm

Additions to the agenda – Council Meeting January 16, 2024

1) Point of Order:

Mr. Mayor, I would like to raise a point of order regarding the appointment of the President pro tempore during the last council meeting.

The steps for approving a motion for president pro tempore in an Ohio village council meeting, following the general principles of "Robert's Rules of Order", typically involve the following:

- 1. Making a Motion:**
 - A council member makes a motion to appoint an individual as president pro tempore. This motion does not require a second.
- 2. Chair Recognition:**
 - The mayor or presiding officer recognizes the member who made the motion, and they state the motion clearly.
- 3. Discussion/Debate:**
 - The chair (Mayor) opens the floor for discussion and debate on the motion. Council members can express their opinions, ask questions, or provide reasons for or against the appointment.
- 4. Additional Motions (if any):**
 - After discussion, the chair may ask if there are any additional motions or nominations for the position of president pro tempore. This step is crucial to allow for alternative proposals.
- 5. Voting:**
 - Once discussion is complete, the chair calls for a vote on the original motion. Council members typically vote by voice or, in some cases, by a show of hands.
- 6. Announcing the Result:**
 - The chair announces the result of the vote, indicating whether the motion has been adopted or rejected.
- 7. Next Steps:**
 - If the motion is adopted, the individual appointed as president pro tempore assumes the role. If there are additional motions or nominations, the process may be repeated until a candidate is elected.

Mr. Mayor, did you open the floor for discussion and debate when it came to the President pro tempore motion?

There should have been an opportunity for discussion and alternative motions before proceeding to a vote. Also, after voting, the chair (Mayor) should have announced the result of the vote, indicating whether the motion had been adopted or rejected.

I have no issue with Councilman Sekanina being appointed to President pro tempore. I supported Councilman Sekanina. However, for the future, to ensure fairness, democracy and transparency, we must follow proper procedure. This is important for the integrity of the decision-making process within Council.

2) Motion:

Motion to make the Memo dated 06/23/2022 from Mayor Diehl to Administrator Martuccio, titled "Disciplinary Action, Written Warning" a public record, in the interest of transparency and accountability.

3) Motion:

Motion to waive the attorney-client privilege covering the request only, submitted by Mayor Diehl to the Solicitor, regarding elected officials and property ownership, in the interest of transparency and accountability.

4) Motion:

Motion to direct the Clerk-Treasurer in her capacity of Public Record Custodian to work with the Solicitor on updating all record retention policies necessary to implement Council Meetings Audio and Video Recording by the next Council Meeting scheduled for February 5th, 2024, in the interest of transparency and accountability. If the necessary updates cannot be in place on or before February 5th, 2024 due to time constraints, the Clerk-Treasurer and the Solicitor shall make every effort to have the above policies in place and updated as soon as possible.

5) Motion:

Motion to direct the Administrator and the Mayor to implement Council Meetings Audio and Video Recording by next Council Meeting scheduled for February 5th, 2024, in the interest of transparency and accountability. A link to all such Council Meeting Recordings shall be maintained on our Jefferson Village website for the public to access at any time in the future.

If the implementation above cannot be in place by February 5th, 2024, due to time constraints, the Administrator and the Mayor shall make every effort to have the Council Meetings Audio and Video Recording system functioning and in place as soon as possible.

Note: The recording equipment for Council Meetings was already approved for purchase in last year's budget by the previous Council. At the time Council approved for up to \$10,000 for the purchase of such equipment. Currently, most all equipment has been purchased and installed for about \$3,500. We have the equipment and we have a YouTube account capable of keeping permanent records. Now it's time for this Council to act to improve transparency, accountability and communication with our residents. Quite frankly, I don't see a reason to delay this any further.

Lastly, I would like to add the following Motion for executive session on page 4 of the Agenda, under "Board of Tax Review" and Immediately before the current Motion to accept the Mayor's recommendation to this board:

6) Motion:

Motion to go into Executive Session to consider the appointment of Mr. Brian Diehl to the Tax Review Board, with action to be taken after.

2023 March Budget

COMM PLANNING & ZONING		py enc	Budget	expense	encumbrance
101-410-5-2340	PROFESSIONAL SERVICES		1,500.00		
101-410-5-2390	MISC. CONTRACTUAL		0.00		
101-410-5-2420	OPERATING SUPPLIES		0.00		
	TOTAL		1,500.00		
ADMINISTRATIVE OFFICES			Budget	expense	encumbrance
101-710-5-2110	ADMINISTRATOR		78,942.84	29,239.17	
101-710-5-2111	Admin Asst.45%		21,790.74	7,817.94	
101-710-5-2112	PT ZONING INSPECTOR		20,800.00		
101-710-5-2113	Custodian		14,894.88	4,387.55	
101-710-5-2120	P.E.R.S. (24% of wage)		32,742.83	7,853.87	0.00
101-710-5-2121	DENTAL/MEDICAL/LIFE INS.		21,395.10	8,585.78	177.50
101-710-5-2122	MEDICARE (1.45% wages)		1,978.21	537.78	
101-710-5-2123	UNEMPLOYMENT COMP.		0.00		
101-710-5-2124	WORKER'S COMP. (2% wages)		1,637.14	228.72	0.00
101-710-5-2200	TRAVEL & TRANSPORTATION	25	1,200.00		25.00
101-710-5-2300	CONTRACTUAL SERVICES	15,990	12,000.00	9,738.81	13,995.00
101-710-5-2310	Aqua		325.00	73.81	19.00
101-710-5-2311	Illum Co		3,300.00	939.60	225.91
101-710-5-2312	Dominion	148.99	1,450.00	821.18	103.54
101-710-5-2320	Communications		6,500.00	2,877.10	537.00
101-710-5-2330	RENTS & LEASES		3,000.00	982.00	0.00
101-710-5-2340	Code updates		10,000.00	3,072.49	0.00
101-710-5-2341	PROFESSIONAL SERVICES	212.5	15,130.00	0.00	4,000.00
101-710-5-2350	MAINTENANCE of EQ and FACILITIES	6,672	8,500.00	3,295.00	7,440.05
101-710-5-2360	INSURANCE & BONDING		5,500.00		
101-710-5-2370	ADVERTISING		800.00		
101-710-5-2380	PRINTING & REPRODUCTION		800.00	487.13	0.00
101-710-5-2390	MISC. CONTRACTUAL		6,000.00	2,750.00	150.00
101-710-5-2391	CONTRACTUAL BOUNCED CHECKS		100.00		
101-710-5-2392	BALANCING		50.00		
101-710-5-2400	SUPPLIES/MATERIALS	350.3	2,500.00	637.74	145.00
101-710-5-2410	OFFICE SUPPLIES	76.15	7,500.00	2,533.58	365.16
101-710-5-2420	OPERATING SUPPLIES		3,000.00	744.84	201.57
	TOTAL	23,475.19	281,836.74	87,604.09	27,384.73
MAYOR AND COUNCIL			Budget	expense	encumbrance
101-730-5-2110	SALARIES & WAGES		27,600.00	11,500.00	
101-730-5-2120	P.E.R.S. (24% of wage)		6,624.00	2,208.00	
101-730-5-2122	MEDICARE (1.45% wages)		400.20	133.40	
101-730-5-2124	WORKERS COMP.(2% of wage)		331.20	68.16	
101-730-5-2200	TRAVEL & TRANSPORTATION		2,000.00		
101-730-5-2320	communications		2,000.00	389.08	0.00
101-730-5-2390	MISC CONTRACTUAL		1,000.00	51.00	
101-730-5-2400	SUPPLIES/MATERIALS		13,000.00		
101-730-5-2420	OPERATING SUPP. (REC/AWARDS)	23.44	3,500.00		23.44
	TOTAL		56,455.40	14,349.64	23.44
CLERK / TREASURER			Budget	expense	encumbrance
101-740-5-2110	SALARIES & WAGES		59,891.56	24,461.19	
101-740-5-2120	P.E.R.S. (24% of wage)		14,373.97	4,811.22	
101-740-5-2121	DENTAL/MEDICAL/LIFE INS.		9,242.80	3,465.30	
101-740-5-2122	MEDICARE (1.45% wages)		868.43	304.54	
101-740-5-2124	WORKERS COMP.(2% of wage)		718.70	100.04	
101-740-5-2200	TRAVEL & TRANSPORTATION	82.98	1,000.00	524.89	1,695.48
101-740-5-2300	CONTRACTUAL SERVICES		16,250.00	16,198.22	0.00
	PROF SERVICES		1,500.00		

Admin

1/16/2024

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2023 March Budget

101-740-5-2390	Miscellaneous Contractual		700.00		
	TOTAL		104,545.48	49,865.40	1,695.48
	LANDS & BUILDINGS		Budget	expense	encumbrance
101-750-5-2300	Contractual Services		500.00		
101-750-5-2301	Contractual Services, Property Taxes		5,100.00	5,075.63	2,600.00
101-750-5-2340	PROF SERVICES		1,500.00		
101-750-5-2341	PROF SERVICES		5,000.00	750.00	0.00
101-750-5-2350	MAINTENANCE of EQ and FACILITIES		50,500.00	8,439.99	1,770.90
101-750-5-2390	MISCELLANEOUS CONTRACTUAL		4,000.00	898.56	0.00
101-750-5-2400	SUPPLIES AND MATERIALS		1,200.00		
101-750-5-2490	VILLAGE DECORATIONS	134.32	3,000.00	43.41	90.91
101-750-5-2510	LAND AND LAND IMPROVEMENT		10,000.00	7,804.00	
101-750-5-2511	TREE PROGRAM (NEW TREES)		15,000.00	5,440.00	
101-750-5-2512	TREE PROGRAM (OLD TREES)		15,000.00		7,200.00
101-750-5-2520	EQUIPMENT		0.00		
	TOTAL	134.32	110,800.00	28,451.59	11,661.81
	COUNTY AUD. & TREAS. FEES		Budget	expense	encumbrance
101-770-5-2300	Auditor Collection Fees		36,000.00	17,327.30	
	TOTAL		36,000.00	17,327.30	0.00
	STATE EXAMINERS FEES		Budget	expense	encumbrance
101-780-5-2300	AUDIT FEES	2180	11,000.00	6,542.40	6,637.60
	TOTAL		11,000.00	6,542.40	6,637.60
	SOLICITOR (ATTORNEY)		Budget	expense	encumbrance
101-785-5-2300	CONTRACTUAL SERVICES	3,920	40,000.00	10,894.63	0.00
	TOTAL	3,920.00	40,000.00	10,894.63	0.00
	INCOME TAX		Budget	expense	encumbrance
101-790-5-2110	INCOME TAX BILLING PERSONEL		40,553.40	13,969.60	
101-790-5-2120	P.E.R.S. (24% of wage)		9,732.82	2,972.92	
101-790-5-2121	DENTAL/MEDICAL/LIFE INS.		3,127.56	965.64	
101-790-5-2122	Medicare (1.45% wage)		588.02	179.62	
101-790-5-2123	Unemployment Compensation		0.00		
101-790-5-2124	Worker's Comp (2% wage)		486.64	102.44	
101-790-5-2125	MEDICAL PHYSICALS		75.00		
101-790-5-2200	TRAVEL & TRANSPORTATION		1,000.00		
101-790-5-2300	CONTRACTUAL SERVICES	50.00	8,200.00	6,145.11	1,800.00
101-790-5-2320	COMMUNICATION		4,000.00	500.00	
101-790-5-2340	COURT COSTS		500.00		
101-790-5-2380	PRINTING & REPRODUCTION		1,800.00	150.00	0.00
101-790-5-2410	OFFICE SUPPLIES		750.00		
101-790-5-2420	OPERATING SUPPLIES		400.00		
101-790-5-2740	REIMBURSEMENT/REFUNDS TAXES	171.37	9,500.00	2,846.08	5,177.58
	TOTAL		80,713.44	27,831.41	6,977.58
224-790-5-2740	REIMBURSEMENT/REFUNDS TAXES		9,500.00	2,846.08	5,177.58
219-790-5-2740	REIMBURSEMENT/REFUNDS TAXES		9,500.00	2,846.08	5,177.58
	TRANSFERS & ADVANCES		Budget	expense	encumbrance
101-795-5-2711	TRANSFER OUT 206		50,000.00		
101-795-5-2712	TRANSFER OUT RECREATION 204		88,000.00		
101-795-5-2714	TRANSFER OUT SENIORS 205		18,000.00		
	TOTAL		156,000.00		
	STREET LIGHTING		Budget	expense	encumbrance

2023 March Budget

209-730-5-2300	CONTRACTURAL SERVICES	5,500.00	611.53	1,388.47
209-730-5-2310	STREET LIGHTS	73,000.00	30,218.99	6,266.04
209-730-5-2311	TRAFFIC SIGNALS	5,575.00	1,477.41	293.73
209-770-5-2300	Auditor Collection Fees	1,750.00	999.20	
	TOTAL	85,825.00	33,307.13	7,948.24
ADMINISTRATION OFFICES (Capital)		Budget	expense	encumbrance
224-770-5-2300	Auditor Collection Fees	250.00	135.59	
224-775-5-2500	capital outlay	0.00		
	TOTAL	250.00	135.59	0.00
American Rescue Plan			expense	encumbrance
450-620-5-2340	Professional Services	20,000.00		15,084.00
REFUSE		Budget	expense	encumbrance
510-560-5-2110	Billing Clerk (15%)	7,263.58	4,078.74	
510-560-5-2120	P.E.R.S. (24% of wage)	1,743.26	899.66	
510-560-5-2121	MEDICAL INS	469.13	182.64	
510-560-5-2122	Medicare	105.32	58.11	
510-560-5-2124	Workers Comp	87.16	27.72	
510-560-5-2300	Refuse & Annual Clean up	200,000.00	93,628.40	37,745.36
510-560-5-2400	Supplies- bags	4,000.00	1,236.00	
510-560-5-2730	Refunds	0.00		
510-770-5-2300	Auditors collection fees	800.00	332.74	
	TOTAL	214,468.46	100,444.01	37,745.36
704-575-5-2730	Unclaimed Funds	1,500.00		
707-795-5-2731	Bid Performance Bond	1,400.00		
Marketing Jefferson Fund		Budget	expense	encumbrance
710-710-5-2302	Contractual Services	4,500.00	3,320.00	500.00
Special Assmt. West Cedar St		Budget	expense	encumbrance
803-795-5-2710	TRANSFER TO 207	11,784.00		
803-770-5-2300	Auditor Collection Fees	416.00		
	Total	12,200.00		
DEPARTMENT TOTALS				
101	COMM PLANNING & ZONING	1,500.00		
101	ADMINISTRATION	281,836.74		
101	MAYOR & COUNCIL	56,455.40		
101	CLERK/TREASURER	104,545.46		
101	LANDS & BUILDINGS	110,800.00		
101	COUNTY AUD & TREAS FEES	36,000.00		
101	Audit Fees	11,000.00		
101	SOLICITOR (ATTORNEY)	40,000.00		
101	INCOME TAX	80,713.44		
101	TRANSFERS & ADVANCES	156,000.00		
209	STREET LIGHTING	85,825.00		
219	TAX REFUNDS	9,500.00		
224	tax refunds 790	9,500.00		
224	Administration (Capital) 710	250.00		
510	REFUSE	214,468.46		
704	Unclaimed Funds	1,500.00		
707	Bid Performance Bond	1,400.00		
710	Jefferson Marketing Fund	4,500.00		
803	Special Assmt. Elliott	12,200.00		
	TOTAL	1,217,994.50		

2023 March Budget

WISHLIST

Part time Zoning Inspector

101-710	Hudson Comm server updates	\$ 9,500.00	part in 2022 budget
	Laptops for clerk / admin asst. / admin	\$ 4,500.00	
	uniform shirts for meetings	\$ 500.00	
101-730	council - recording system for mtgs.	\$ 10,000.00	
101-750	electronic signs (2)	\$ 25,000.00	
	uptown sound system	\$ 4,000.00	4,000.00
	town hall fixture updates (light & sinks) paint	\$ 5,500.00	5,100.00
	misc / siren / gutters	11,000.00	5,600.00
		45,500.00	

Memo

Date: 06/23/22

To: Administrator Martuccio

Re: Disciplinary Action, Written Warning

Administrator Martuccio,

On the morning of June 21, I was contacted by a resident / local business owner concerned about a discussion overheard at Pueblo Real on the evening of June 20. The individual stated that they were seated on the opposite side of the restaurant from Patty Fisher and three other individuals, and the group was speaking loud enough that he could clearly hear the conversation.

He specifically stated that "I just wanted to enjoy my beer, but the group was speaking so loudly that I couldn't help but overhear." He expressed concern that there was a significant amount of critical conversation regarding the Deputy Chief and the group was "bad mouthing" the Deputy Chief. Further, he stated "if I heard someone talking about me in that way I would have been pretty upset and probably got up and confronted them". He specifically noted a comment from one individual that "we didn't want him in the position and we tried to prevent it; he's not qualified for the job". He expressed concern about the unprofessional nature of the conversation casting a negative light on the Village.

The only individual he was able to identify was Clerk-Treasurer Patty Fisher. On June 22, I spoke with Clerk-Treasurer Fisher and asked who was at the restaurant with her. She identified Councilman Szewczyk, yourself, and another citizen.

I asked her if comments that you made during the conversation violated the Village Ordinance regarding Village ordinance 254.19 (a) (34) "Malicious gossip, slander, or talk against a supervisor, fellow employee or a citizen". She stated to me that they did.

As Village Administrator in a leadership position, you are expected to act professionally at all times when in the public eye, and should never gossip or speak maliciously about another employee, the Village, or its operations. Speaking in this way in a restaurant setting where an individual can hear the conversation on the opposite side is especially egregious.

This behavior is a group 2 offense listed in Village ordinance 254.20 (c) (6) K:

"Making or publishing false, vicious or malicious statements concerning employees, supervisors, the village or its operations."

Your behavior is unacceptable and this serves as a written warning to ensure you correct it. In addition, in accordance with Village ordinance 254.20 (c) (6) you are to receive 3 days unpaid suspension. Any future incidents will result in further disciplinary action up to and including termination.

Brian Diehl
Mayor

Date

Pasquale Martuccio
Administrator

Date



27 East Jefferson Street
Jefferson, Ohio 44047
Phone: 440.576.5548
Fax: 440.576.5548
WWW.JEFFERSONOHIO.GOV

Solicitor Fairchild,

I am requesting a formal legal opinion for use by the incoming mayor and council regarding conflicts of interest as they relate to elected officials and property ownership. Specifically, councilman elect Martuccio and his family members own a significant quantity of real estate in and around the Village of Jefferson, much of which could benefit from any economic development efforts by the incoming elected officials. This benefit is in many cases not uniform across all citizens, and would serve to disproportionately enrich Mr. Martuccio.

Such benefits could arise from:

- Annexation of township property to the Village
- Installation of utilities such as water and sewer
- Implementation of tax incentives to encourage development within the Village.
- Grant funding through the Appalachian Community Grant or other revitalization funds that may be obtained via CRA or other means
- Agreements with County officials for the construction of a new jail / rehabilitation complex. (Note that Mr. Martuccio or his family members have already been paid \$5,000 through an option contract with the County for a rehabilitation facility)

The Ohio Ethics Commission provides guidance on conflicts of interest and seems to be extraordinarily restrictive, specifying that any discussion, review, recommendation, inspection, or investigation would constitute a violation of the ethics laws.

I am requesting a formal opinion on:

- Limitations on Mr. Martuccio's ability to participate in committees, council discussions, or votes regarding matters of property, tax incentives, grant funding, zoning, annexation, or utility expansion.
- Limitations on Mr. Martuccio's ability to informally discuss, review, recommend, inspect, or investigate matters that may affect his properties with other council members or Village officials. These could include informal conversations outside of normal council business that would potentially influence the actions of other council members.
- Limitations on Mr. Martuccio's ability to have discussions, formal or informal, outside of council activities, that might influence the actions of public officials that are not part of Jefferson Village, but are aware of his position on council, regarding the development of his properties.
 - For example, should Mr. Martuccio be approached by county officials regarding a rehabilitation complex, or by an investor desiring to develop one of his properties currently outside Village limits, what actions should be taken to avoid a conflict of interest?

Appendix I

- What actions should Mr. Martuccio take to ensure that discussions regarding personal business are not influenced by a parties' knowledge of his position on council?
- An initial meeting of a Community Development Corporation (CDC) has been held to discuss formation of a group capable of obtaining grant funding to support private property owners. Mr. Martuccio participated in this meeting and at that time intended to continue as a founding member. Should this group be formed, is it permissible for Mr. Martuccio to participate in this organization as a member?
- The Ethics Commission also specifies that public servants may NOT take any action in matters that definitely and directly affect themselves, their family members or their business associates. As these parties may not be known, provide guidance on how these family members or business associates should be reported?

I have included references from the Ohio Ethics Commission below, including one of may advisory opinions that addresses similar issues. A search of the site with keywords "council member property" brings up several other documents that address similar issues. Also attached is a list of properties owned by Mr. Martuccio or his businesses.

Thank you for your time.

Brian Diehl

Mayor, Village of Jefferson

List of Properties:

250290003400	MARTUCCIO PASQUALE	880 LENOX NEW LYME RD	Property adjacent Village
250290003800	MARTUCCIO PASQUALE	LENOX NEW LYME RD	Farm land south of town, separated from Village limits by 3 parcels
250300000100	MARTUCCIO PASQUALE	1231 LENOX NEW LYME RD	Farm land south of town
250300000101	MARTUCCIO PASQUALE	1231 LENOX NEW LYME RD	Farm land south of town
250300002100	MARTUCCIO PASQUALE	W MULBERRY ST	46.65 Acres South side of Mulberry, adjacent to Village
260200000201	MARTUCCIO PASQUALE	S ELM & MULBERRY ST	8.5 Acres Corner of Mulberry and Falcon Way
260200011000	MARTUCCIO PASQUALE	44 W SATIN ST	
260290006100	MARTUCCIO PASQUALE	708 STATE ROUTE 307 E	Duplex condos, Annexed to Village.
260410000200	MARTUCCIO PASQUALE	409 BRITTANY LN	
420170003800	MARTUCCIO VINCENZINA	STATE ROUTE 46	
420170004000	MARTUCCIO VINCENZINA	2790 STATE ROUTE 46	
250150002501	MARTUCCIO VINCENZINA	STATE ROUTE 46	88 acres north of town, previously offered as a potential jail site.
260340009100	WALL-NUTT PROPERTIES LLC	14 WALL ST	Commercial property on Chestnut, center of town
260340009300	WALL-NUTT PROPERTIES LLC	36 N CHESTNUT ST	Commercial property on Chestnut, center of town
260200006500	ELMPLEX LLC	18 Elm St S	Apartments
250341000100	565 WEST BEECH LLC	565 W BEECH (SR 307) ST	Apartment complex
250341001500	565 WEST BEECH LLC	565 W BEECH (SR 307) ST	Apartment complex
250341001600	565 WEST BEECH LLC	565 W BEECH (SR 307) ST	Apartment complex
250341001700	565 WEST BEECH LLC	565 W BEECH (SR 307) ST	Apartment complex
250341001800	565 WEST BEECH LLC	565 W BEECH (SR 307) ST	Apartment complex
250341001900	565 WEST BEECH LLC	565 W BEECH (SR 307) ST	Apartment complex
250341002000	565 WEST BEECH LLC	565 W BEECH (SR 307) ST	Apartment complex
250341002100	565 WEST BEECH LLC	565 W BEECH (SR 307) ST	Apartment complex
250341002200	565 WEST BEECH LLC	565 W BEECH (SR 307) ST	Apartment complex
250341002300	565 WEST BEECH LLC	565 W BEECH (SR 307) ST	Apartment complex
250341002400	565 WEST BEECH LLC	565 W BEECH (SR 307) ST	Apartment complex
250341002500	565 WEST BEECH LLC	565 W BEECH (SR 307) ST	Apartment complex
250341002600	565 WEST BEECH LLC	565 W BEECH (SR 307) ST	Apartment complex

Ref: <https://ethics.ohio.gov/education/col.html>

The Ohio Ethics Commission states that:

When someone in public service is confronted with a conflict of interest, he or she must completely abstain from making decisions about or influencing how the matter is resolved.

Such abstention or recusal should include refraining from:

- *Voting*
- *Discussing*
- *Reviewing*
- *Recommending*
- *Inspecting*
- *Investigating*
- *Or taking any other action on the matter*

*Remember, public servants may **NOT** take any action in matters that definitely and directly affect themselves, their family members or their business associates.*

From Advisory Opinion 88-004:

(1) The Ohio Ethics Law and related statutes do not prohibit a city council member from participating in matters that would provide a general, uniform benefit to citizens within the city;

(2) Division (D) of Section 102.03 of the Revised Code prohibits a city council member from voting, deliberating, participating in discussions, or otherwise using his official authority or influence with regard to any matter that would provide such a definite and particular pecuniary benefit or detriment to property in which he has an interest that his private interests could impair his independence of judgment in making his official decisions;

(3) Division (D) of Section 102.03 of the Revised Code prohibits a city council member from voting, deliberating, participating in discussions, or otherwise using his official authority or influence with regard to any matter that would provide a definite and particular pecuniary benefit or detriment to property in which a business associate has an interest, unless the council member can demonstrate that, under the circumstances, his independence of judgment in making official decisions could not be impaired by his business associate's interests.

Within this opinion, the document specifically addresses the potential for a definite and particular pecuniary benefit regarding water, sewer, streetscape, and road projects, all of which are likely to occur within the Village in the near term.

As discussed above, the Commission held in Advisory Opinion No. 80-007 that street paving, sidewalk construction, tree planting, and the improvement of lighting, to be undertaken by a city in an area containing the property of a council member would enhance the value of a council member's property such that "his personal interest could affect his vote, thus impairing his independence of judgment as a member of city council!" Similarly, the widening of a road in front of a council member's property or the installation of water or sewer lines which would service a member's property are matters which directly affect the value of the property or provide a definite and particular pecuniary benefit to the property, such that the council member's independence of judgment could be impaired by his personal interests. Therefore, a member of city council may not vote, deliberate, or participate in discussions to widen a road or install water and sewer lines which would serve or benefit property in which he has an interest. This direct and definite benefit to property resulting from the installation of water or sewer lines should be contrasted to the construction of a new water or sewer plant, which would provide a uniform benefit to all citizens within the city, and would benefit a particular piece of property only in a general or indefinite manner. A member of city council would not be prohibited from voting, deliberating, or discussing the construction of a new water or sewer plant.



Ohio Revised Code

Section 102.03 Representation by present or former public official or employee prohibited.

Effective: April 4, 2023

Legislation: Senate Bill 288

(A)(1) No present or former public official or employee shall, during public employment or service or for twelve months thereafter, represent a client or act in a representative capacity for any person on any matter in which the public official or employee personally participated as a public official or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion.

(2) For twenty-four months after the conclusion of service, no former commissioner or attorney examiner of the public utilities commission shall represent a public utility, as defined in section 4905.02 of the Revised Code, or act in a representative capacity on behalf of such a utility before any state board, commission, or agency.

(3) For twenty-four months after the conclusion of employment or service, no former public official or employee who personally participated as a public official or employee through decision, approval, disapproval, recommendation, the rendering of advice, the development or adoption of solid waste management plans, investigation, inspection, or other substantial exercise of administrative discretion under Chapter 343. or 3734. of the Revised Code shall represent a person who is the owner or operator of a facility, as defined in section 3734.01 of the Revised Code, or who is an applicant for a permit or license for a facility under that chapter, on any matter in which the public official or employee personally participated as a public official or employee.

(4) For a period of one year after the conclusion of employment or service as a member or employee of the general assembly, no former member or employee of the general assembly shall represent, or act in a representative capacity for, any person on any matter before the general assembly, any committee of the general assembly, or the controlling board. Division (A)(4) of this section does not apply to or affect a person who separates from service with the general assembly on or before December 31, 1995. As used in division (A)(4) of this section "person" does not include any state agency or political subdivision of the state.

Appendix 2



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(5) As used in divisions (A)(1), (2), and (3) of this section, "matter" includes any case, proceeding, application, determination, issue, or question, but does not include the proposal, consideration, or enactment of statutes, rules, ordinances, resolutions, or charter or constitutional amendments. As used in division (A)(4) of this section, "matter" includes the proposal, consideration, or enactment of statutes, resolutions, or constitutional amendments. As used in division (A) of this section, "represent" includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person.

(6) Nothing contained in division (A) of this section shall prohibit, during such period, a former public official or employee from being retained or employed to represent, assist, or act in a representative capacity for the public agency by which the public official or employee was employed or on which the public official or employee served.

(7) Division (A) of this section shall not be construed to prohibit the performance of ministerial functions, including, but not limited to, the filing or amendment of tax returns, applications for permits and licenses, incorporation papers, and other similar documents.

(8) Division (A) of this section does not prohibit a nonelected public official or employee of a state agency, as defined in section 1.60 of the Revised Code, from becoming a public official or employee of another state agency. Division (A) of this section does not prohibit such an official or employee from representing or acting in a representative capacity for the official's or employee's new state agency on any matter in which the public official or employee personally participated as a public official or employee at the official's or employee's former state agency. However, no public official or employee of a state agency shall, during public employment or for twelve months thereafter, represent or act in a representative capacity for the official's or employee's new state agency on any audit or investigation pertaining to the official's or employee's new state agency in which the public official or employee personally participated at the official's or employee's former state agency through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion.

(9) Division (A) of this section does not prohibit a nonelected public official or employee of a political subdivision from becoming a public official or employee of a different department, division,



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agency, office, or unit of the same political subdivision. Division (A) of this section does not prohibit such an official or employee from representing or acting in a representative capacity for the official's or employee's new department, division, agency, office, or unit on any matter in which the public official or employee personally participated as a public official or employee at the official's or employee's former department, division, agency, office, or unit of the same political subdivision. As used in this division, "political subdivision" means a county, township, municipal corporation, or any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state.

(10) No present or former Ohio casino control commission official shall, during public service or for two years thereafter, represent a client, be employed or compensated by a person regulated by the commission, or act in a representative capacity for any person on any matter before or concerning the commission.

No present or former commission employee shall, during public employment or for two years thereafter, represent a client or act in a representative capacity on any matter in which the employee personally participated as a commission employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion.

(B) No present or former public official or employee shall disclose or use, without appropriate authorization, any information acquired by the public official or employee in the course of the public official's or employee's official duties that is confidential because of statutory provisions, or that has been clearly designated to the public official or employee as confidential when that confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary to the proper conduct of government business.

(C) No public official or employee shall participate within the scope of duties as a public official or employee, except through ministerial functions as defined in division (A) of this section, 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 immediate family owns or controls more than five per cent. No public official or employee shall



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participate within the scope of duties as a public official or employee, except through ministerial functions as defined in division (A) of this section, in any license or rate-making proceeding that directly affects the license or rates of any person to whom the public official or employee or immediate family, or a partnership, trust, business trust, corporation, or association of which the public official or employee or the public official's or employee's immediate family owns or controls more than five per cent, has sold goods or services totaling more than one thousand dollars during the preceding year, unless the public official or employee has filed a written statement acknowledging that sale with the clerk or secretary of the public agency and the statement is entered in any public record of the agency's proceedings. This division shall not be construed to require the disclosure of clients of attorneys or persons licensed under section 4732.12 of the Revised Code, or patients of persons licensed under section 4731.14 of the Revised Code.

(D) No public official or employee shall use or authorize the use of the authority or influence of 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 the public official or employee with respect to that person's duties.

(E) No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

(F) No person shall promise or give to a public official or employee anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

(G) In the absence of bribery or another offense under the Revised Code or a purpose to defraud, contributions made to a campaign committee, political party, legislative campaign fund, political action committee, or political contributing entity on behalf of an elected public officer or other public official or employee who seeks elective office shall be considered to accrue ordinarily to the public official or employee for the purposes of divisions (D), (E), and (F) of this section.

As used in this division, "contributions," "campaign committee," "political party," "legislative campaign fund," "political action committee," and "political contributing entity" have the same



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meanings as in section 3517.01 of the Revised Code.

(H)(1) No public official or employee, except for the president or other chief administrative officer of or a member of a board of trustees of a state institution of higher education as defined in section 3345.011 of the Revised Code, who is required to file a financial disclosure statement under section 102.02 of the Revised Code shall solicit or accept, and no person shall give to that public official or employee, an honorarium. Except as provided in division (H)(2) of this section, this division and divisions (D), (E), and (F) of this section do not prohibit a public official or employee who is required to file a financial disclosure statement under section 102.02 of the Revised Code from accepting and do not prohibit a person from giving to that public official or employee the payment of actual travel expenses, including any expenses incurred in connection with the travel for lodging, and meals, food, and beverages provided to the public official or employee at a meeting at which the public official or employee participates in a panel, seminar, or speaking engagement or provided to the public official or employee at a meeting or convention of a national organization to which any state agency, including, but not limited to, any state legislative agency or state institution of higher education as defined in section 3345.011 of the Revised Code, pays membership dues. Except as provided in division (H)(2) of this section, this division and divisions (D), (E), and (F) of this section do not prohibit a public official or employee who is not required to file a financial disclosure statement under section 102.02 of the Revised Code from accepting and do not prohibit a person from promising or giving to that public official or employee an honorarium or the payment of travel, meal, and lodging expenses if the honorarium, expenses, or both were paid in recognition of demonstrable business, professional, or esthetic interests of the public official or employee that exist apart from public office or employment, including, but not limited to, such a demonstrable interest in public speaking and were not paid by any person or other entity, or by any representative or association of those persons or entities, that is regulated by, doing business with, or seeking to do business with the department, division, institution, board, commission, authority, bureau, or other instrumentality of the governmental entity with which the public official or employee serves.

(2) No person who is a member of the board of a state retirement system, a state retirement system investment officer, or an employee of a state retirement system whose position involves substantial and material exercise of discretion in the investment of retirement system funds shall solicit or accept, and no person shall give to that board member, officer, or employee, payment of actual travel expenses, including expenses incurred with the travel for lodging, meals, food, and beverages.



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(I) A public official or employee may accept travel, meals, and lodging or expenses or reimbursement of expenses for travel, meals, and lodging in connection with conferences, seminars, and similar events related to official duties if the travel, meals, and lodging, expenses, or reimbursement is not of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties. The house of representatives and senate, in their code of ethics, and the Ohio ethics commission, under section 111.15 of the Revised Code, may adopt rules setting standards and conditions for the furnishing and acceptance of such travel, meals, and lodging, expenses, or reimbursement.

A person who acts in compliance with this division and any applicable rules adopted under it, or any applicable, similar rules adopted by the supreme court governing judicial officers and employees, does not violate division (D), (E), or (F) of this section. This division does not preclude any person from seeking an advisory opinion from the appropriate ethics commission under section 102.08 of the Revised Code.

(J) For purposes of divisions (D), (E), and (F) of this section, the membership of a public official or employee in an organization shall not be considered, in and of itself, to be of such a character as to manifest a substantial and improper influence on the public official or employee with respect to that person's duties. As used in this division, "organization" means a church or a religious, benevolent, fraternal, or professional organization that is tax exempt under subsection 501(a) and described in subsection 501(c)(3), (4), (8), (10), or (19) of the "Internal Revenue Code of 1986." This division does not apply to a public official or employee who is an employee of an organization, serves as a trustee, director, or officer of an organization, or otherwise holds a fiduciary relationship with an organization. This division does not allow a public official or employee who is a member of an organization to participate, formally or informally, in deliberations, discussions, or voting on a matter or to use the public official's or employee's official position with regard to the interests of the organization on the matter if the public official or employee has assumed a particular responsibility in the organization with respect to the matter or if the matter would affect that person's personal, pecuniary interests.

(K) It is not a violation of this section for a prosecuting attorney to appoint assistants and employees in accordance with division (B) of section 309.06 and section 2921.421 of the Revised Code, for a



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chief legal officer of a municipal corporation or an official designated as prosecutor in a municipal corporation to appoint assistants and employees in accordance with sections 733.621 and 2921.421 of the Revised Code, for a township law director appointed under section 504.15 of the Revised Code to appoint assistants and employees in accordance with sections 504.151 and 2921.421 of the Revised Code, or for a coroner to appoint assistants and employees in accordance with division (B) of section 313.05 of the Revised Code.

As used in this division, "chief legal officer" has the same meaning as in section 733.621 of the Revised Code.

(L) No present public official or employee with a casino gaming regulatory function shall indirectly invest, by way of an entity the public official or employee has an ownership interest or control in, or directly invest in a casino operator, management company, holding company, casino facility, or gaming-related vendor. No present public official or employee with a casino gaming regulatory function shall directly or indirectly have a financial interest in, have an ownership interest in, be the creditor or hold a debt instrument issued by, or have an interest in a contractual or service relationship with a casino operator, management company, holding company, casino facility, or gaming-related vendor. This section does not prohibit or limit permitted passive investing by the public official or employee.

As used in this division, "passive investing" means investment by the public official or employee by means of a mutual fund in which the public official or employee has no control of the investments or investment decisions. "Casino operator," "holding company," "management company," "casino facility," and "gaming-related vendor" have the same meanings as in section 3772.01 of the Revised Code.

(M) A member of the Ohio casino control commission, the executive director of the commission, or an employee of the commission shall not:

(1) Accept anything of value, including but not limited to a gift, gratuity, emolument, or employment from a casino operator, management company, or other person subject to the jurisdiction of the commission, or from an officer, attorney, agent, or employee of a casino operator, management company, or other person subject to the jurisdiction of the commission;



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(2) Solicit, suggest, request, or recommend, directly or indirectly, to a casino operator, management company, or other person subject to the jurisdiction of the commission, or to an officer, attorney, agent, or employee of a casino operator, management company, or other person subject to the jurisdiction of the commission, the appointment of a person to an office, place, position, or employment;

(3) Participate in casino gaming or any other amusement or activity at a casino facility in this state or at an affiliate gaming facility of a licensed casino operator, wherever located.



Ohio Revised Code

Section 1.03 Anything of value defined.

Effective: August 27, 1976

Legislation: House Bill 1040 - 111th General Assembly

As used in any section of the Revised Code for the violation of which there is provided a penalty or forfeiture, unless the context otherwise requires, "anything of value" includes:

- (A) Money, bank bills or notes, United States treasury notes, and other bills, bonds, or notes issued by lawful authority and intended to pass and circulate as money;
- (B) Goods and chattels;
- (C) Promissory notes, bills of exchange, orders, drafts, warrants, checks, or bonds given for the payment of money;
- (D) Receipts given for the payment of money or other property;
- (E) Rights in action;
- (F) Things which savor of the realty and are, at the time they are taken, a part of the freehold, whether they are of the substance or produce thereof or affixed thereto, although there may be no interval between the severing and taking away;
- (G) Any interest in realty, including fee simple and partial interests, present and future, contingent or vested interests, beneficial interests, leasehold interests, and any other interest in realty;
- (H) Any promise of future employment;
- (I) Every other thing of value.

Appendix 3

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Megan C. Kelley, Vice Chair
Bruce E. Bailey
Julie A. Rutter
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Mark A. Vander Laan

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INFORMATION SHEET: ADVISORY OPINION NO. 2018-02
PUBLIC INFRASTRUCTURE IMPROVEMENTS AFFECTING A WARD

What is the question in the opinion?

When can a city council member elected by the residents to represent a ward participate in matters involving public infrastructure improvements that affect properties only in his or her ward, including property in which the council member has an interest?

What is the general rule?

If public infrastructure improvements affect only a ward in the city, a council member elected by the residents to represent that ward is prohibited from voting, deliberating, participating in discussions, or otherwise using his or her official authority or influence with regard to public infrastructure improvements which would provide a definite and particular financial benefit to his or her property interests.

What is the exception?

This prohibition does not apply to public infrastructure improvements which provide a general, uniform benefit to all or a large portion of the property in the ward and the benefit to the council member's property interests is not selective, differential, unique, or in disproportion to the benefit provided to other affected property in the ward.

When did the conclusions in this opinion become effective?

The opinion became effective upon acceptance by the Commission.

For More Information, Please Contact:

Paul M. Nick, Executive Director

THIS COVER SHEET IS PROVIDED FOR INFORMATION PURPOSES.
IT IS NOT AN ETHICS COMMISSION ADVISORY OPINION.
ADVISORY OPINION NO. 2018-02 IS ATTACHED.

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Advisory Opinion
Number 2018-02
October 31, 2018
Participation in Public
Infrastructure
Improvements that Affect
Only a Ward

Syllabus by the Commission:

If public infrastructure improvements affect properties only in a city ward, Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a council member elected to represent that ward from voting, deliberating, participating in discussions, or otherwise using his or her official authority or influence with regard to public infrastructure improvements which would provide a definite and particular financial benefit to his or her property interests, unless the improvements provide a general, uniform benefit to all or a large portion of the properties in the ward, and the benefit to the council member's property interests is not selective, differential, unique, or in disproportion to the benefit provided to other affected property in the ward.

* * *

The Ohio Ethics Commission has been asked to clarify when a city council member elected to represent a ward can participate in public infrastructure improvements that affect properties only in his or her ward, including property in which the council member has an interest.

Soliciting or Using Position to Secure a Thing of Value—R.C. 102.03(D) and (E)

The question before the Commission raises issues under R.C. 102.03(D) and (E), which provide:

- (D) No public official or employee shall use or authorize the use of the authority or influence of 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 the public official or employee with respect to that person's duties.

- (E) No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

A city council member is a "public official or employee" subject to restrictions in R.C. 102.03(D) and (E).¹

The term "anything of value" is defined to include money and every other thing of value.² A definite benefit or detriment to a person's financial interests is considered to be a thing of value under R.C. 102.03(D), including a benefit to property in which the person has an interest.³

R.C. 102.03(D) prohibits a public official from using his or her authority or influence to secure anything of value where the thing of value could impair the official's objectivity and independence of judgment.⁴ This provision applies when a decision on a matter that is before the official would provide a definite and direct financial benefit or detriment to his or her private interests.⁵ In that situation, the thing of value is of such a character that it could bias his or her discretion and judgment if he or she were to participate in the matter.⁶ As a result, a public official is required to refrain from participating in discussions, deliberations, or otherwise using his or her official position, formally or informally, with regard to any matter before the official's public agency that will directly affect his or her private financial interests.⁷

R.C. 102.03(E) prohibits a public official from merely soliciting or accepting anything of value for him or herself, even if the official does not use the authority or influence of his or her public position to secure it, if the thing of value is of such a character as to have a substantial or improper influence on the official. Therefore, a public official may be prohibited from simply accepting or asking for a thing of value depending on the specific facts.

However, the Commission has explained that there are some circumstances where the benefit to a public official that results from an action of the agency he or she serves is not of "such a character as to manifest a substantial and improper influence" on the official with respect to his or her duties.⁸

For example, in Advisory Opinion No. 88-004, the Ethics Commission stated that R.C. 102.03(D) does not prohibit a public official from participating in matters from which the official receives a benefit *provided that* the matters result in a uniform benefit to the entire political subdivision or to a large portion of the political subdivision that the official serves.

In Advisory Opinion No. 93-016, the Commission concluded that R.C. 102.03(D) does not prohibit a member of a county board of health who is a private business owner from participating in the enactment of a rule that will definitely and directly affect the official's business, provided that the rule affects similar businesses in the same or similar manner.

Finally, in Advisory Opinion No. 92-013, the Ethics Commission stated that R.C. 102.03(D) does not prohibit a public official or employee from participating in matters involving public infrastructure improvements⁹ affecting all or a large portion of the political subdivision he or she serves, provided that the public official or employee does not receive any benefits from the

improvements that are selective, differential, unique, or disproportionate to the benefits received by other affected residents of the political subdivision.

The application of R.C. 102.03(D) and (E) is always dependent upon the facts and circumstances for each public official in each situation.¹⁰ When considering the facts and circumstances of each situation, where there is a benefit or detriment to property owned by public officials, a conflict of interest exists. The question becomes whether the benefit or detriment that results from a public agency's decisions on a matter that affects a public official's property interests is: (1) uniform to all or a large portion of the properties in the community, including property in which an individual official has an interest, in which case the conflict of interest will not impair the official's independence of judgment or unbiased discretion in the matter; or (2) uniform to a large portion of the properties in the community, but having a particular, definite, and direct impact on an individual official's property interests, in which case the conflict of interest could impair the official's independence of judgment or unbiased discretion in the matter.¹¹

Application to Public Infrastructure Improvements that Affect a Ward

Some cities have a ward plan of government or a hybrid of at-large representation and wards. Ward elections are a system in which a municipality is divided into relatively equal voting districts.¹² Residents can vote for city council candidates within their ward. If elected, a candidate represents and remains accountable to the electors within their home ward. Under R.C. 705.73, "Any member of the council, elected from wards, who, at the time of his election was a resident of the ward which he represents, shall forfeit his office if he removes from such ward."

If public infrastructure improvements affect only a ward in the city, a council member elected by the residents to represent that ward is prohibited from voting, deliberating, participating in discussions, or otherwise using his or her official authority or influence regarding the improvements which would provide a definite and particular financial benefit to his or her property interests. These restrictions apply to both residential and business properties.¹³

However, R.C. 102.03(D) and (E) do not prohibit a ward council member from participating in the city's consideration of a public infrastructure improvement that affects all or a large portion of the property in the ward, including property in which the council member has an interest, if the facts show that:

- The council member's property will be affected by the infrastructure improvement in the same manner as any other affected property in the ward;
- The decisions on the infrastructure improvement do not result in benefits for the council member's property that are selective, differential, unique, or disproportionate to the benefits received by other affected properties in the ward; and
- The council member does not solicit or accept any benefits for his or her property that are selective, differential, unique, or in disproportion to the benefits offered to any other affected property in the ward.

The presence of several of the following factors in a particular situation could help a council member demonstrate that the benefit he or she will receive as a result of an infrastructure improvement is not unique or of "such a character as to manifest a substantial and improper influence" on the official with respect to his or her duties:

- There is an objective showing that the council member's property is within the public infrastructure improvement designated area;
- The properties in the ward that are affected by the infrastructure improvement are not predominantly properties owned by the council member, his or her family members, or business associates;
- The council member has no relationship (such as employment or a prohibited investment) with any vendors hired to perform the improvements;
- The public infrastructure improvement has a uniform impact on all affected properties in the ward because the circumstances are the same (such as a city-wide street maintenance program where all or a large portion of the city streets will be repaired in stages);
- The public infrastructure improvement is made in compliance with a court order or mandate from a state or federal regulatory agency;
- The council member's property does not receive any specialized benefit not granted to every other similarly situated property; and
- Before any discussion, deliberation, or vote on the infrastructure improvement, the council member discloses all properties he or she has an interest in that will be affected by the improvement.

For example:

A city is making public infrastructure improvements in compliance with a court ordered consent decree. A ward council member has disclosed to council that she is one of many other ward residents that owns a house in the infrastructure improvement designated area. Neither she nor any of her family members or business associates owns any other property in the designated area.

Because the improvements are being made pursuant to a consent decree, the council member could show that her objectivity and independence of judgment in making the compulsory infrastructure improvement decisions would not be impaired by her private property interests. In that case, the council member would not be prohibited from participating in the infrastructure improvement decisions provided that she does not solicit or accept benefits that are not provided for in the consent decree or benefits that are not offered to other affected properties in the ward.

Conclusion

Therefore, it is the opinion of the Commission and the Commission advises that: If the public infrastructure improvements affect properties only in a city ward, Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a council member elected to represent that ward from voting, deliberating, participating in discussions, or otherwise using his or her official authority or influence with regard to public infrastructure improvements which would provide a definite and

particular financial benefit to his or her property interests, unless the improvements provide a general, uniform benefit to all or a large portion of the properties in the ward, and the benefit to the council member's property interests is not selective, differential, unique, or in disproportion to the benefit provided to other property in the ward.

Merom Brachman

Merom Brachman, Chairman
Ohio Ethics Commission

The Ohio Ethics Commission Advisory Opinions referenced in this opinion are available on the Commission's Web site: www.ethics.ohio.gov

¹ A "public official or employee" is "any person who is elected or appointed to an office or is an employee of any public agency." R.C. 102.01(B). A "public agency" is "the general assembly, all courts, any department, division, institution, board, commission, authority, bureau or other instrumentality of the state, a county, city, village, or township, the five state retirement systems, or any other governmental entity." R.C. 102.01(C).

² R.C. 102.03(G); R.C. 1.03.

³ See Ohio Ethics Commission Advisory Opinions No. 80-007, 85-006, 88-004, 92-013, and 92-019.

⁴ Adv. Ops. No. 87-006, 89-006, and 90-013.

⁵ Adv. Op. No. 88-004.

⁶ *Id.*

⁷ *Id.* The official cannot make a decision that affects his or her own interests and cannot delegate his or her decision-making authority on the matter to a subordinate official or employee. Adv. Op. No. 2011-02.

⁸ Adv. Op. No. 85-006 (not all "conflicts of interest" are prohibited by R.C. 102.03(D) and (E), but only those in which a public official has a dual interest that would impair his or her independence of judgment in making decisions).

⁹ Infrastructure is the term for the basic physical systems of a municipality— transportation, communication, sewage, water and electric systems are all examples of infrastructure. See R.C. 5709.40 ("public infrastructure improvement" includes, but is not limited to, public roads and highways; water and sewer lines; the continued maintenance of those public roads and highways and water and sewer lines; environmental remediation; land acquisition, including acquisition in aid of industry, commerce, distribution, or research; demolition, including demolition on private property when determined to be necessary for economic development purposes; storm water and flood remediation projects, including such projects on private property when determined to be necessary for public health, safety, and welfare; the provision of gas, electric, and communications service facilities, including the provision of gas or electric service facilities owned by nongovernmental entities when such improvements are determined to be necessary for economic development purposes; and the enhancement of public waterways through improvements that allow for greater public access). See also R.C. 122.19(E), R.C. 122.23(H), and R.C. 122.951. These systems tend to be vital to a political subdivision's economic development and prosperity. R.C. 5709.40.

¹⁰ See Adv. Op. No. 87-008.

¹¹ Adv. Op. No. 92-013. See also Adv. Op. No. 76-005 (the Commission has explained that it is unnecessary that the thing of value actually has a substantial and improper influence on the official provided that it is of such a character that it could have such influences).

¹² R.C. 705.73.

¹³ See, for example, Adv. Ops. No. 92-013 and 92-016.

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May 28, 2010

Informal Opinion 2010-INF-0528

John P. Curp, City Solicitor
City of Cincinnati



Dear Mr. Curp:

On May 14, 2010, the Ohio Ethics Commission received your letter requesting an advisory opinion. In your letter, you explained that you are the City Solicitor for the City of Cincinnati (city), and that you are requesting the opinion on behalf of the city.

By way of history, you have explained that the city is involved in a large-scale, intra-urban streetcar transportation project. You question whether the Cincinnati streetcar project ("Streetcar") constitutes a public infrastructure improvement which provides a general and uniform benefit to the residents, workers, and business owners of Cincinnati, sufficient to permit, in the absence of a direct benefit, individual members of Cincinnati City Council to discuss, deliberate, and vote on matters related to the authorization of appropriations or authorization of the issuance of bonds to build the Streetcar pursuant to the Ethics Law.

Brief Answer

As explained more fully below, the Streetcar project constitutes a public infrastructure improvement that may well provide, depending upon factors entirely external to the application of the Ethics Law, a general and uniform benefit to the residents, workers, and business owners in Cincinnati. In the absence of a direct benefit to the council members, their family members, or their business associates, the members of city council are not prohibited from discussing, deliberating about, or voting on matters related to authorization of appropriations or authorization of the issuance of bonds to build the Streetcar.

However, in applying the Ethics Law to the Streetcar matter before city council, a council member who has, or whose family members or business associates have, ownership or development interests in property that is directly adjacent to the route of the Streetcar in the first two phases of the project, which are subject to the power and discretion of city council, will

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receive a particular, definite, and direct benefit or detriment from the Streetcar development. For that reason, Ethics Law conflicts of interest sections R.C. 102.03(D) and (E) prohibit such a council member from discussing, deliberating about, voting on, or participating in any other way, in any matters related to the current phases of the Streetcar, including authorization of appropriations or authorization of the issuance of bonds to build it.

Facts

You have explained that the primary purpose of the Streetcar is to provide public transportation to the residents, workers, and visitors of the city. You have explained that the city is considering construction of the first two phases of a city-wide network of streetcar lines. These two phases involve a route from The Banks to Findlay Market (through the central business district of Cincinnati) and from Findlay Market to the Zoo (running through the University district and the Medical Center). The proposed route of the Streetcar will link an intermodal transportation center near the river to the business district, tourist attractions, hospitals, the University of Cincinnati, and over a dozen neighborhoods.

The specific location of Streetcar routes will be determined by the City Manager, in consultation with engineering and technical experts. You have indicated that members of city council do not intend to participate, and the administration will not request the participation of city council, in decision-making regarding the location of the Streetcar route.

Purpose of an Advisory Opinion

R.C. 102.08 statutorily authorizes the Ohio Ethics Commission to render advisory opinions with regard to questions concerning ethics, conflict of interest, or financial disclosure under Revised Code Chapter 102., and Sections 2921.42 and 2921.43. Generally, the Ethics Commission issues advisory opinions in response to questions that are either hypothetical or prospective in nature. Ohio Ethics Commission Advisory Opinion No. 75-037.

The Commission has explained that the rendering of an advisory opinion is not a fact-finding process and it cannot, in rendering an advisory opinion, determine whether a public official or employee has violated a provision of the law that has criminal sanctions. *Id.* Rather, an advisory opinion serves to explain the prohibitions within the Ethics Law and related statutes and sets forth the standards and criteria that a public official or employee must observe in order to avoid violating the law based solely on the facts and circumstances described by the official or employee in his or her request to the Commission. Adv. Ops. No. 75-037, 90-013, and 92-015. If an official receives a written advisory opinion from the Ethics Commission, whether a formal, published opinion or an informal or staff opinion, in response to his or her request, and acts in compliance with the guidance in the opinion, the official will have immunity from any civil or criminal action or removal from office based on the facts described in the opinion.

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As you noted in your letter, the Ethics Commission issued a staff advisory opinion in June 2009 to one council member regarding the Streetcar based upon the facts presented by the requester. The Commission was not made aware at the time the staff opinion was rendered that you had issued an earlier advisory opinion to the same council member in January 2009 regarding the same question. The council member has acted on matters involving the Streetcar in reliance on the opinion you issued, which presented a reasonable analysis based on the Commission's precedent regarding the uniformity of benefit to all citizens gained from infrastructure improvements.

Your letter provides the Commission with additional facts involving the Streetcar project to those described by the council member in his request for an advisory opinion last year, including several maps of the project. As the City Solicitor, directly involved in the fundamental mechanics of this project, the Commission realizes that the facts you present further enlighten the Commission's understanding of the project. For that reason, the Commission will examine the general question you have raised. This advisory opinion addresses only the prospective matters you have described and does not reach any conclusions regarding matters that may have already occurred.

Conflict of Interest—R.C. 102.03(D) and (E)

All members of city council are "public officials" subject to the prohibitions of R.C. 102.03 (D) and (E), which provide:

- (D) No public official or employee shall use or authorize the use of the authority or influence of 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 the public official or employee with respect to that person's duties.
- (E) No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

R.C. 102.01(B) and (C) (any person who is elected to an office of a city is a public official); Adv. Op. No. 89-008.

The term "anything of value" includes money, goods, any interest in realty, and every other thing of value. R.C. 102.03(G), 1.03. "Anything of value" includes any increase or decrease to the value of property, and any beneficial or detrimental economic impact of a decision made by a public body. Adv. Ops. No. 85-012, 90-002, 90-012, and 97-002.

The Commission has explained that R.C. 102.03(D) and (E) prohibit public officials from voting on, deliberating about, participating in discussions, or otherwise using their official authority or influence with regard to any matter that would provide such a definite and particular pecuniary benefit or detriment to property in which they have an interest that their private interests could impair their independence of judgment in making their official decisions. The law also prohibits public officials from soliciting, or using their positions to secure, anything of value for members of their family and for their business associates. The Commission has determined that the relationship between a public official and his or her family members (such as parents, children, spouse, or siblings) or business associates (such as an employer or partner) is so close that the official's objectivity and independence of judgment would be impaired if the official were to make decisions or recommendations, or otherwise take action, on any matter that would result in a definite and direct benefit or detriment to these related parties. See Adv. Op. No. 79-008, 89-008, and 98-002.

As you noted in your letter, the Commission has examined the application of the Ethics Law and related statutes to many situations that include questions of conflicting interests involving infrastructure and other large scale public improvements. In Advisory Opinion No. 88-004, the Commission was asked about the ability of a city council member to participate in infrastructure improvements (specifically, the widening of roads and installation of sewers) that would affect the council member and his business partners. The Commission stated:

[A] city council member may participate or vote on general legislation which provides a uniform benefit to all citizens within the city, or a large portion thereof, but may not participate in matters which provide a particular and definite pecuniary benefit to property in which he, or, as discussed below, certain other parties, have an interest. For example, a council member may participate in enacting a general zoning code for the city, but may not discuss or vote to approve a zoning change or variance affecting property in which he has an interest. (Citations omitted.) The Commission has also held that council members may not participate in discussions or vote on matters regarding a downtown revitalization project which would benefit their property. (Citation omitted.) The revitalization project consisted of street paving, sidewalks, tree planting, and lighting, although one official was held to be precluded from participating even though the building in which he had an interest was to receive only improved lighting. . . .

Although an official may not be prohibited from participating in matters which provide a general uniform benefit to citizens of the city, the mere fact that the property of persons other than the council member will benefit from council action does not necessarily mean that, under specific circumstances, he would not receive a definite and particular benefit from the action so as to be prohibited from participating. (Citation omitted.) *The standard in judging such conduct is whether the matter before council would provide such a definite and particular benefit for the council member that his private interest could impair his*

independence of judgment or unbiased discretion in making his official decisions. (Citations omitted.) A council member should refrain from participating in any matter where an affirmative decision would decrease the value of his property, or have some other direct, detrimental effect on his private interests, as well as where an affirmative vote would benefit his property, since his independence of judgment could be impaired in either situation.

Adv. Op. No. 88-004 (underlined text in original; italics added).

In Advisory Opinion No. 92-013, the Ethics Commission considered whether a village council member was prohibited from participating in infrastructure improvements such as neighborhood revitalization through sidewalk improvements in the village. The Commission applied both the public contract restrictions, found in R.C. 2921.42, and the conflict of interest restrictions, found in R.C. 102.03, to the question. As you have correctly noted in your letter, the Commission concluded that individual landowners do not, under the public contract restrictions set forth in R.C. 2921.42, have an interest, or occupy a position of profit, in infrastructure improvements so as to implicate those public contract restrictions.

Therefore, even though public money would be expended and public contracts entered into in order to complete infrastructure improvements, the Commission concluded that R.C. 2921.42(A)(1) and (3) do not prohibit the village council members whose property may be affected by the improvements from participating in matters regarding the commitment or expenditure of public funds. Further, the Commission concluded that, even though their properties may receive the value of the improvements, individual village council members do not have a definite and direct interest in the improvements such that the prohibition against having an interest in a public contract, contained in R.C. 2921.42(A)(4), would be implicated.

This same conclusion involving the public contract law would apply to the situation you have described. Individual property owners in the city would not have a definite and direct interest, or occupy a position of profit, in city council's actions related to the authorization of appropriations or the authorization of the issuance of bonds to build the Streetcar, even though their properties may be directly adjacent to the Streetcar route.¹ For that reason, R.C. 2921.42(A)(1) and (3) do not prohibit the officials from participating in matters affecting the Streetcar.

¹ By contrast, if a business owned by a city council member, or by a council member's family members or business associates, would be providing services to the city in connection with contracts for goods or services related to the construction of the Streetcar, or whose property would be acquired by the city for the Streetcar, would be within the scope of the restrictions in R.C. 2921.42(A)(1), (3), and (4).

However, the Commission did *not* conclude, in Advisory Opinion No. 92-013, that a public official having a particular, definite and direct conflict of interest was always enabled to participate in matters affecting infrastructure improvements as part of a revitalization project. The Commission concluded:

R.C. 102.03(D) *prohibits* a public official from participating or voting in matters which provide a particular and definite pecuniary benefit to property in which he has an interest. . . . However, R.C. 102.03(D) would not prohibit a public official from participating or voting on general legislation which provides a uniform benefit to all citizens within the political subdivision, or a large portion thereof. . . . Applying the reasoning of Advisory Opinions No. 85-006 and 88-004 to the instant situation, a village council member may participate or vote on general legislation which provides a uniform benefit to all citizens within the village, or a large portion thereof, but may not participate in matters which provide a particular and definite pecuniary benefit to property in which he has an interest.

Adv. Op. No. 92-013 (emphasis added.)

Large-Scale Public Improvements

Directly responsive to the key question before the Commission in applying the Ethics Law, you have described the Streetcar project as a large-scale transportation project, and compared it to bus systems. Generally, the Commission has stated, in prior applications of the conflict of interest provisions, that large-scale comprehensive infrastructure improvements are designed for the general and uniform benefit of the entire political subdivision, or a large portion thereof, and thus are the type of action in which public officials may participate even though they, or their family members or business associates, own property that will benefit from the improvements. In such situations, if the Ethics Law prohibited public officials from participating in the governmental entity's decisions regarding improvements, where the officials are among the majority of citizens in the community whose property value will be affected by the improvements, the governmental entity would be unable to move forward with such large-scale development matters.

The application of R.C. 102.03 (D) and (E) is always dependent upon the facts and circumstances for each public official in each situation. See Adv. Op. No. 87-008. When considering the facts and circumstances of each situation, where there is a benefit or detriment to property owned by public officials, a conflict of interest exists. The question is whether the benefit or detriment that results from a public agency's decisions on a matter is: (1) uniform to all, or most, citizens in the community, including individual officials, in which case the conflict of interest *will not* impair the officials' independence of judgment or unbiased discretion in the matter; or (2) uniform to most, but particular, definite, and direct for individual officials, or for their family members or business associates, in which case the conflict of interest *will* impair the officials' independence of judgment or unbiased discretion in the matter.

The fact that a city council member, or the member's family or business associates, owns property that will receive a definite and direct benefit as a result of infrastructure improvements does not mean that the improvements cannot be made, or that appropriations cannot be authorized, or bonds issued, in connection with the project. Rather, the Ethics Law prohibits the council member from *participating* in the city's decision-making process in those matters that provide a particular and definite pecuniary benefit to property owned by the council member, or the council member's family or business associates. The council member would be prohibited from voting on, discussing, deliberating about, making recommendations, formally or informally lobbying, or taking any other action, in his or her role as a council member, with respect to the matter. Adv. Op. No. 92-019. The council member would also be prohibited from using his or her influence, as a city council member, over city employees or other city officials, in order to secure any benefit, or avoid any detriment, to the value of the property. Id.

Application of Precedent

In general, the Commission has concluded that the value of property *adjacent* to parcels that are newly developed or restored, or whose uses are substantially changed, will be definitely and directly affected by the development or restoration. See Adv. Ops. No. 92-019 and 98-002. A variety of factors pertaining to the development or revitalization of one property could affect the value of adjacent property. Increased or decreased noise, traffic, and pedestrians, fewer or additional traffic signals and signs, the availability or access to on-street or off-street parking, and changes to the character or use of a property, resulting from development or restoration of the property, can all affect the value of adjacent properties. R.C. 102.03(D) and (E) will prohibit a public official from participating in a public agency's decisions related to the development or restoration of a property if the official, or the official's family members or business associates, own or have development rights for properties adjacent to it.

While the Streetcar project will undoubtedly affect all citizens in Cincinnati, it cannot be argued that its affect on all citizens is "uniform" in manner. The "re-envision Cincinnati" and other maps you provided to the Commission show the proposed route of the Streetcar and most of the city. The first two phases of the Streetcar will serve a small portion of the city. Those individual citizens whose properties are located directly adjacent to the proposed route for the first two phases will be affected by the Streetcar project in a way that is particular, definite, and direct, and do not receive a uniform benefit from the city's action on the Streetcar project.

According to a feasibility study conducted for the city by HDR Engineering, Inc., the proposed alignment of the streetcar route was selected, in large part, to serve and stimulate reinvestment and economic development in planned redevelopment areas. The study team recognized that distance from transit (either walking or linear) is a key variable used in determining the system's effect on property values. For assessment, the team broke the Streetcar development area into three market zones and seven sections along the alignment. The study estimated development and premium effects for the Streetcar corridor, a three block radius around the alignment in those seven sections. The study team conducted a benefit cost analysis

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that estimated total increases in values for existing commercial and residential properties in the Streetcar corridor of \$379 million over 30 years attributed solely to the streetcar investment.

Your specific question is whether the Streetcar project is a public infrastructure improvement which is a general and uniform benefit to the residents, workers, and business owners of Cincinnati, sufficient to permit, in the absence of a direct benefit, individual members of Cincinnati City Council to discuss, deliberate, and vote on matters related to authorization of appropriations or authorization of the issuance of bonds to build the Streetcar.

The answer is that the Streetcar project is a public infrastructure improvement that provides a general and uniform benefit to the residents, workers, and business owners in Cincinnati. In the absence of a direct benefit to them, their family members, or their business associates, the members of city council are not prohibited from discussing, deliberating about, or voting on matters related to the Streetcar, including the authorization of appropriations or authorization of the issuance of bonds to build it.

However, a council member who has, or whose family members or business associates have, ownership or development interests in property that is directly adjacent to the route of the Streetcar in the first two phases of the project, which are subject to the power and discretion of council, will receive a particular, definite, and direct benefit from the Streetcar development.² For that reason, R.C. 102.03(D) and (E) prohibit such a council member from discussing, deliberating about, or voting on, or participating in any other way, in matters related to the Streetcar, including the authorization of appropriations or authorization of the issuance of bonds.

The additional information you provided did not change the opinion rendered last year for the individual council member who sought guidance. However, the other members of council can proceed on the Streetcar project in reliance on this opinion, and will be afforded the immunity for their actions described in R.C. 102.08

Comparison to an Existing Transit System

Your request notes concerns about the comparison between streetcars and other transit systems. Without attempting to address all transportation systems in all communities, the Commission would note several factual distinctions between the Metro Bus System in Cincinnati and the Streetcar project.

² While the feasibility study identified a Streetcar corridor that will be affected by the Streetcar development, the Commission is concluding only that those properties adjacent to the proposed route will receive a definite and direct enough benefit or suffer a definite and direct enough detriment for purposes of the application of R.C. 102.03(D) and (E). The Commission does not conclude or suggest that other properties will not be affected, only that those properties most definitely and directly affected are the adjacent properties.

First, the Metro Bus System is an established system that has been in existence for many years and provides services to the *entire* Cincinnati Metropolitan area throughout Hamilton County and into adjoining counties. By contrast, the Streetcar project is a fledgling development which, should the first two phases be completed, will serve a *significantly* smaller portion of the city.

Second, the Metro Bus System is not operated by the city, but is under the control of a separate political subdivision, the Southern Ohio Regional Transit Authority (SORTA). A council member may ask SORTA to consider changing the way it operates the Metro, but cannot effectuate those changes as a part of his or her public authority. According to its Website, SORTA receives funding from a variety of sources, including three-tenths of one percent (.3%) of the earned income tax paid to the city by individuals who live or work in the city. While the city provides a significant portion of the funding for SORTA, the source and amount of that funding is established by the city's charter, approved by the citizens of the city, and not subject to the discretion of council. Cincinnati City Charter Art. VIII, Sec. 6c.

Finally, the characters of these two public transportation systems are fundamentally distinct. In general, a bus system operates on public roads and streets, and its routes can be altered at any time without significant infrastructure investments. By contrast, the routes of a streetcar, once constructed, can be altered only by moving both tracks and systems of power lines.

Therefore, in Cincinnati, the Ethics Law does not prohibit a city official from voting to authorize the transfer of funds from the city to SORTA, or participate in other matters that involve SORTA, regardless of the proximity of a Metro bus line to property in which they, a family member, or a business associate has an interest. If the city did control the Metro bus system in Cincinnati, the restrictions discussed earlier in this opinion would apply to council members in matters regarding the bus system.

Conclusion

As explained more fully below, the Streetcar project constitutes a public infrastructure improvement that may well provide, depending upon factors entirely external to the application of the Ethics Law, a general and uniform benefit to the residents, workers, and business owners in Cincinnati. In the absence of a direct benefit to the council members, their family members, or their business associates, the members of city council are not prohibited from discussing, deliberating about, or voting on matters related to authorization of appropriations or authorization of the issuance of bonds to build the Streetcar.

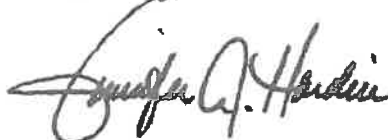
However, in applying the Ethics Law to the Streetcar matter before city council, a council member who has, or whose family members or business associates have, ownership or development interests in property that is directly adjacent to the route of the Streetcar in the first two phases of the project, which are subject to the power and discretion of city council, will

John P. Corp
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receive a particular, definite, and direct benefit or detriment from the Streetcar development. For that reason, Ethics Law conflicts of interest sections R.C. 102.03(D) and (E) prohibit such a council member from discussing, deliberating about, voting on, or participating in any other way, in any matters related to the current phases of the Streetcar, including authorization of appropriations or authorization of the issuance of bonds to build it.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on May 25, 2010. The 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. If you have any questions or desire additional information, please feel free to contact this Office again.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jennifer A. Hardin", written in a cursive style.

Jennifer A. Hardin
Chief Advisory Attorney

OHIO ETHICS COMMISSION

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February 25, 2003

Informal Opinion 2003-INF-0225-1

Matthew R. Vekasy

Dear Mr. Vekasy:

In a letter received by the Ethics Commission on December 12, 2002, you ask for an explanation of the restrictions that the Ohio Ethics Law and related statutes would impose upon you if you were appointed to the City of Columbus's (City) Board of Zoning Adjustment (BZA).

You state that you own a development company that builds projects in the City. You state that you have appeared before City Council and the BZA, and have engaged the law firm of Smith and Hale for legal expertise, to obtain zoning changes for your projects. You also state that you are a commercial real estate agent marketing industrial, office, and retail properties for Taggart Management & Real Estate Service, LLC (Taggart). You state further that you are a former employee of Casto Communities (Casto).

In your request, you present four main questions concerning your potential ability to serve, and another six subquestions. Based upon these varied questions and their facts, the application of the Ethics Law below is necessarily more complex.

Brief Answer

As explained below, the Ohio Ethics Laws and related statutes do not prohibit you from serving on the City BZA. However, these protections against personal and business conflicts of interest place significant restrictions upon your participation in matters that directly and definitely affect your financial interests or the financial interests of parties in business with you if you were to serve. The Ohio Ethics Laws and related statutes are criminal laws, and failure to comply with the restrictions discussed in this opinion can result in criminal penalty. The application of these restraints varies depending on the facts and circumstances in each of the many fact patterns you have raised.

Appendix 6

Questions Pertaining to Participation

You have asked whether the Ohio Ethics Laws and related statutes prohibit you, if you are appointed to the City BZA, from participating in matters that affect six parties. To more easily explain the response, the Commission has rearranged your questions and applied the Ethics Law to the parties you have identified in this order: (1) your private development company; (2) partners of your private development company; (3) your private employer (Taggart); (4) your former employer (Casto); (5) a law firm that your private company engages for legal advice and assistance; and (6) partners of your private development company who are employees of your former employer (Casto).

Conflict of Interest Provisions—R.C. 102.03(D) and (E)

All of these questions implicate R.C. 102.03(D) and (E), which read:

- (D) No public official or employee shall use or authorize the use of the authority or influence of 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 the public official or employee with respect to that person's duties.
- (E) No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

The term "public official and employee" is defined to include any person who holds an appointed city office. R.C. 102.01(B) and (C). A member of a city's board of zoning adjustment is a public official for purposes of the prohibitions set forth in R.C. 102.03(D) and (E).

The term "anything of value" is defined for purposes of R.C. 102.03 in R.C. 1.03 to include money and every other thing of value. R.C. 102.03(G). A definite and direct pecuniary benefit, or the avoidance of a detriment, is considered to be a thing of value under R.C. 102.03(D) and (E). Ohio Ethics Commission Advisory Opinion No. 88-004 and 92-019. The Ethics Commission has also determined that the beneficial or detrimental financial impact upon the value of real property, created by a public agency's land-use decision, is a thing of value for purposes of R.C. 102.03(D). Adv. Ops. No. 88-005, 92-019, and 98-002. For example, an increase or enhancement in the value of property, an opportunity or ability to sell property at a profit or for a commission, or other benefit to property is a thing of value. Adv. Ops. No. 79-003, 79-008, and 85-006. The application of R.C. 102.03(D) and (E) is dependent upon the facts and circumstances of each individual situation. Adv. Ops. No. 87-007 and 89-003.

Changes in the Ohio Ethics Law that broadened its coverage are important in responding to your questions. Prior to 1986, R.C. 102.03(D) prohibited a public official or employee from using his official position to secure anything of value for himself "that would not ordinarily accrue to him in the performance of his official duties, which thing is of such character as to manifest a substantial and improper influence upon him with respect to his duties." (Emphasis added.) The Ethics Commission applied this statutory language to prohibit a public official or employee from participating in matters that would benefit the public official's or employee's own financial interests. Adv. Ops. No. 79-003 and 80-007. The Commission also concluded that R.C. 102.03(D) prohibited a public official or employee from acting on matters that affect the property, business, or other financial interests of his spouse or his employer, if the official himself would derive some benefit as a result of his actions. Adv. Ops. No. 79-008, 80-003, and 84-010. By contrast, the Commission concluded that R.C. 102.03(D) did not "apply to things of value accruing to a family member or business associate, provided the public official does not benefit personally." Adv. Op. No. 86-007. However, the Commission also cautioned that it would create the appearance of impropriety for a public official or employee to participate in discussions or vote on a matter concerning a business owned by a family member or business associate even if he had no personal financial interest in the matter. Adv. Op. No. 86-007.

In Am. Sub. H.B. 300, effective September 17, 1986, the General Assembly amended R.C. 102.03(D) to delete the requirement that the thing of value be for the public official or employee, and broadened the scope of the prohibition imposed by R.C. 102.03(D). Adv. Op. No. 87-004. As a result, the law is not limited in its application to situations where the public official or employee would himself secure a benefit. Adv. Op. No. 88-004. However, R.C. 102.03(D) still requires that the thing of value, whether it is secured for the official or for someone else, have a concrete and direct effect such that it is of a character as to manifest a substantial and improper influence upon him with respect to his duties. Id.

In Advisory Opinion No. 93-003, the Commission stated:

R.C. 102.03(D) prohibits a public official or employee from using his authority or influence to secure anything of value, not only for himself, but for members of his family (see Advisory Opinion No. 92-012), for his business associates, (see Advisory Opinions No. 88-004 and 88-005), for a professional organization on which the public official or employee serves as a board member (see Advisory Opinion No. 90-012), [and] for his private outside employer (see Advisory Opinion No. 91-004).

It should be noted that the Commission has not applied the law in a vague or arbitrary fashion to any person with any type of relationship to a public official or employee. In the cited opinions, where a definite and direct thing of value accrues, as a result of a public official's or employee's action, to a person or entity that has a close familial, economic, or fiduciary relationship to the official or employee, the thing of value is of such a character as to manifest a substantial and improper influence upon the official or employee with respect to the performance of his duties. Consequently, where a matter is pending before a public agency that definitely and directly affects the financial interests of a party with a close familial, economic, or fiduciary relationship

to an official or employee of the agency, R.C. 102.03(D) prohibits the official or employee from securing anything of value for the related party by participating in the matter.

In addition to amending R.C. 102.03(D) in Am. Sub. H.B. 300, the General Assembly enacted R.C. 102.03(E). R.C. 102.03(E) prohibits a public official or employee from soliciting anything of value for himself and for any other party with whom he has a close familial, economic, or fiduciary relationship, because the thing of value is capable of manifesting a substantial and improper influence upon the official.

The prohibitions imposed by R.C. 102.03(D) and (E) serve the public interest in effective, objective, and impartial government by preventing situations where public officials and employees are influenced by things of value secured or solicited for themselves or other parties with whom they have a close tie or nexus. This tie impairs the objectivity and independence of judgment of a public official or employee, which the public reasonably expects, and subsequently erodes the effectiveness of the public agency he serves. Adv. Ops. No. 89-014 and 90-002. These statutes further support public confidence that the decisions of a public board, like a BZA, are being made by individuals who do not have any distinct link to the parties before the board.

Your Development Company

In Advisory Opinion No. 85-006, the Ethics Commission explained that a member of a city planning commission, who was employed as a realtor, was not prohibited from serving on the planning commission, but that R.C. 102.03(D) prohibited him from participating in matters that would affect his real estate interests. The Commission cautioned that a realtor serving on a city planning commission should review each matter coming before the commission to determine whether he, his firm, or his immediate family had a private, pecuniary interest in the public agency's land-use decision that may conflict with his public duties.

Therefore, if you are appointed to the City BZA, R.C. 102.03(D) will prohibit you from voting, deliberating, participating in discussions, or otherwise using your official position, either formally or informally, with regard to zoning matters that would affect the interests of your private development company. R.C. 102.03(E) will prohibit you from soliciting anything of value for your development company. Among other things, R.C. 102.03(E) prohibits you from advocating matters involving your development company before the BZA or with BZA members or staff.

You have stated that your development company has built all of its projects in a specific area of Columbus and ask if you are prohibited from participating in matters affecting all projects that are located in this area. You state that after the BZA decides a matter involving property in this area, your development company could desire to purchase and develop this property.

If you are appointed to the City BZA, R.C. 102.03(D) will prohibit you from participating in matters affecting property in the specific area of the City where your development company builds projects if you fairly and reasonably anticipate that your company could receive a definite and direct benefit from the decision of the BZA. As explained below, these decisions could benefit your development company either by making it desirable for your company to acquire the property that is the subject of the BZA decision or by altering the value of property bordering or near property that is owned by, or produces income for, your development company.

For example, in Advisory Opinion No. 76-006, the Ethics Commission determined that a city council member is prohibited from voting to secure the city's purchase of real estate if he is aware that the seller of the real estate will invest a portion of the proceeds of the sale in the council member's private business. R.C. 102.03(D) does not prohibit you from purchasing a piece of property simply because the BZA has considered a matter involving the property in the past. However, R.C. 102.03(D) prohibits you from participating in matters affecting properties in the area of the City that is of interest to your company if you reasonably foresee that your company will purchase the property and the BZA decision would make the property desirable for acquisition.

R.C. 102.03(D) also prohibits a public official or employee from participating in land-use decisions affecting the value of property bordering or close to his property. The Ethics Commission explained that a land-use decision affecting property bordering or near the official's or employee's property could have a definite and direct beneficial or detrimental financial impact upon the value of his property. Adv. Ops. No. 88-004, 92-013, and 92-019. For example, in Advisory Opinion No. 92-019, the Ethics Commission held that R.C. 102.03(D) prohibited a city council member from participating in actions of the city council regarding a proposed road extension that would be located approximately 150 feet from his property. Therefore, R.C. 102.03(D) prohibits you from participating in land-use matters before the BZA that directly affect the value of property bordering or near property that is owned by, or produces income for, your development company.

Partners of Your Development Company

As explained above, R.C. 102.03(D) prohibits a public official or employee from participating in matters that would secure a thing of value for any of his business associates. Adv. Op. No. 88-004. R.C. 102.03(E) prohibits a public official or employee from soliciting anything of value for a business associate. The Ethics Commission has stated that a public official's or employee's business associates are parties who are acting with the public official or employee for a common business purpose. Adv. Ops. No. 85-004, 86-002, and 88-004. The Commission explained that the word "business" is defined, in Black's Law Dictionary, as "[employment, occupation, profession, or commercial activity engaged in for gain or livelihood]" and "[activity or enterprise for gain, benefit, advantage or livelihood." Black's Law Dictionary 179 (5th ed. 1979). Adv. Op. No. 93-003. For example, the Ethics Commission has stated that: (1) a private employer is the business associate of his employee (Adv. Op. No. 89-008); (2) a firm is the business associate of its representatives or agents (Adv. Op. No. 84-013); (3) law partners are business associates (Adv. Op. No. 90-007); and (4) business partners are business

associates (Adv. Op. No. 85-004). All of these are examples of parties involved in common business endeavors.

Therefore, if you are appointed to the BZA, R.C. 102.03(D) will prohibit you from voting, deliberating, participating in discussions, or otherwise using your official position, either formally or informally, in a land-use matter before the BZA that would result in a definite and direct benefit to the financial interests of your business partners. R.C. 102.03(E) will prohibit you from soliciting, as a member of the BZA, any direct and definite benefit for your business associate. These prohibitions extend to all matters before the BZA regarding a land-use issue in which one of your partners has a financial interest despite the fact that your development company is not involved in the particular project.

Present Employer—Taggart

In Advisory Opinion No. 89-008, the Ethics Commission explained that an employer holds a position of power and authority over the hiring, compensation, discipline, and termination of its employees. See also Adv. Ops. No. 80-003 and 88-005. A public official or employee who is in the position of making an official decision regarding the pecuniary interests of his private employer would be using his position to secure a thing of value for his employer that could manifest a substantial and improper influence on the official or employee with respect to the performance of his duties.

If you are appointed to the BZA, R.C. 102.03(D) prohibits you from participating in zoning matters that would affect the interests of Taggart. R.C. 102.03(E) prohibits you from soliciting, as a member of the BZA, any benefit for Taggart.

Former Employer—Casto Communities

As stated above, you are a former employee of Casto Communities. The issue is whether a former employer of a public official or employee is a party with a relationship to the public official or employee that is similar to the relationships the Commission has identified as likely to result in a substantial and improper influence on the public official or employee.

In Advisory Opinion No. 90-011, the Ethics Commission considered whether R.C. 102.03(D) prohibited a council member who is also an attorney from participating in a matter before council involving a former client and concluded that generally it did not. The Commission stated:

The possibility that a council member would have a conflict of interest merely because a party appearing before council had formerly been a client of his law firm or law partner is, however, much more remote [than the possibility of a conflict involving a party who is currently represented by his law firm or partner on the matter]. Advisory Opinions No. 88-005 and 88-009. Therefore, the council member is not prohibited by R.C. 102.03(D) from participating in a matter presented to council by a former client of his law firm or law partner.

Adv. Op. No. 90-011. The Ethics Commission cautioned, however, that the relationship must be absolutely and enduringly severed. The Commission explained that there must be: (1) no ongoing relationship between the party before the public agency and the official; (2) no understanding that a relationship will be resumed in the future; and (3) no review, approval, or action based upon work previously performed by the official. Id. See also Adv. Op. No. 92-004 (a county sheriff or deputy sheriff may do business with a nonprofit corporation and professional organization immediately after ceasing to serve as an officer or director of the Association).

You severed your employment relationship with Casto in 1998. Therefore, if you are appointed to the City BZA, then R.C. 102.03(D) and (E) do not prohibit you from participating in matters affecting the interests of your former private employer provided that the severance of the employer-employee relationship is absolute and enduring. There must be: (1) no ongoing relationship between yourself and Casto; (2) no understanding that the employer-employee relationship will be resumed in the future; and (3) no action taken as a BZA member based upon work that you previously performed as an employee of Casto.

Law Firm Used by Your Development Company

As stated above, your development company has engaged the law firm of Smith and Hale for legal expertise to obtain zoning changes for your projects. You also state that Smith and Hale represents up to 25% of the parties bringing matters before the BZA.

The fact that both your development company and a party with matters before the BZA may be clients of the same law firm generally creates no definite and direct relationship between your development company and either Smith and Hale or the other development companies that are clients of Smith and Hale to constitute a prohibited conflict. Therefore, R.C. 102.03(D) and (E) do not prohibit you from participating in matters before the BZA solely because parties involved are also clients of Smith and Hale.

If, however, you are actively involved in a legal matter upon which you are represented by Smith and Hale, R.C. 102.03(D) and (E) prohibit you from participating in matters before the BZA on which Smith and Hale is representing clients. R.C. 102.03(E) would obviously prohibit you from soliciting or accepting any kind of discount or other financial benefit from Smith and Hale as a result of, or related to, your participation in matters involving the law firm's clients.

Partnership with an Employee of Casto

You ask whether you could participate in matters affecting Casto if you, in the future, became a partner of a Casto employee. As set forth above, R.C. 102.03(D) and (E) prohibit a public official or employee from participating in matters that would affect his business associate's interests and from soliciting or securing a benefit for a business associate, including his employer. Your partner would be your business associate. See Adv. Op. No. 85-004 and discussion above.

Whether you are prohibited from participating as a BZA member regarding Casto, if an employee of Casto is your partner, depends on the facts and circumstances of the individual situation. At this time, you have not formed a partnership with a Casto employee. If you do form such a partnership, you should contact the Commission to communicate the specific facts and circumstances so that the Commission can consider the application of the Ohio Ethics Law at that time.

Other Considerations

In addition to the limits on participation discussed above, other provisions of the Ethics Law will condition your service on the BZA. These provisions will apply to you while you serve on the BZA and for one year after you leave that position.

The Revolving Door Prohibition—R.C. 102.03(A)

As set forth above, you state that you have appeared before the City Council and BZA to obtain zoning changes for your projects. R.C. 102.03(A) restricts the actions of a public official or employee who desires to appear before public agencies, while serving as an official or employee and for one year after leaving public service or employment. R.C. 102.03(A)(1) provides:

No present or former public official or employee shall, during public employment or service or for twelve months thereafter, represent a client or act in a representative capacity for any person on any matter in which the public official or employee personally participated as a public official or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion.

The Franklin County Court of Appeals upheld the "Revolving Door" prohibition as constitutional. State v. Nipps, 66 Ohio App.2d 17 (1979).

R.C. 102.03(A) prohibits a present or former public official or employee from representing, or acting in a representative capacity for, any "person." A "person," for purposes of R.C. 102.03(A)(1), includes governmental agencies, individuals, corporations, business trusts, estates, trusts, partnerships, and associations. See R.C. 1.59(C) and Adv. Ops. No. 82-002 and 89-003. In your situation, your private development company is a "person" for purposes of R.C. 102.03(A)(1).

The prohibition in R.C. 102.03(A) applies to any "matter" in which the official or employee personally participated. The term "matter" includes such concrete items as a specific occurrence or problem requiring discussion, decision, research, or investigation, a legal proceeding, an application, and a settlement of a dispute or question. Adv. Op. No. 99-001. "Matter" also includes such abstract items as a dispute of special or public importance and a controversy submitted for consideration. *Id.* In the instant situation, any land-use issue that comes before the BZA is a "matter" for purposes of R.C. 102.03(A). R.C. 102.03(A) defines

"personal participation" to include "decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion."

R.C. 102.03(A) prohibits you, during your service as a member of the BZA and for one year after you leave your public position, from representing your development company before BZA or any public agency on any matter in which you participated as a member of the BZA through decision, recommendation, investigation, or other substantial exercise of administrative discretion. Adv. Ops. No. 87-001 and 91-009. For example, as set forth above, you state that you anticipate that your development company could desire to purchase property after the BZA decides a matter involving the property in a manner that would make the property desirable for your company to acquire it for development. Because you would have participated in the BZA decision involving the property, R.C. 102.03(A) prohibits you, during your service as a member of the BZA and for one year after you leave your public position, from representing your development company before the City Council, BZA, or any public agency to obtain zoning changes regarding the your company's development of this particular piece of property.

Receiving Compensation of Services Rendered—R. C. 102.04(C)

Your attention is directed to R.C. 102.04(C), which reads:

Except as provided in division (D) of this section, no person who is elected or appointed to an office of or employed by a county, township, municipal corporation, or any other governmental entity, 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 which is before any agency, department, board, bureau, commission, or other instrumentality, excluding the courts, of the entity of which he is an officer or employee.

As a member of the BZA, you would be a person appointed to an office of a municipal corporation and therefore you would be subject to the prohibitions imposed by R.C. 102.04(C).

As set forth above, you state that you have appeared before the City Council and BZA to obtain zoning changes for your projects. If you are appointed to the BZA, R.C. 102.04(C) will prohibit you from receiving "compensation" in the form of proceeds from the operation of your development company for personally rendering any service in any case, proceeding, application, or other matter which is before any agency, department, board, bureau, commission, or other instrumentality, excluding the courts, of the City. The personal rendering of service would include your preparation of plans or proposals to be submitted to any agency of the City, including but not limited to the BZA. It does not include the performance of ministerial functions such as the filing of applications for permits and licenses, and other documents. R.C. 102.04(F).

Division (D) of R.C. 102.04 provides an exception to this prohibition for public officials who are appointed to a nonelective position and reads as follows:

- (D) A public official who is appointed to a nonelective office or a public employee shall be exempted from division (A), (B), or (C) of this section if both of the following apply:
 - (1) The agency to which the official or employee wants to sell the goods or services, or before which the matter that involves the rendering of his services is pending, is an agency other than the one with which he serves;
 - (2) Prior to rendering the personal services or selling or agreeing to sell the goods or services, he files a statement with the appropriate ethics commission, with the public agency with which he serves, and with the public agency before which the matter is pending or that is purchasing or has agreed to purchase goods or services.

The statement required by R.C. 102.04(D) must contain the official's or employee's name and address, information about the two public agencies involved, and a brief description of the pending matter and of the personal services to be rendered. The statement must also contain the official's or employee's declaration that he disqualifies himself for a period of two years from any participation as a public official or employee in any matter involving any public official or employee of the agency before which the matter is pending.

Because you would be serving in a nonelective position if you were to be appointed to the BZA, the exception provided by R.C. 102.04(D) would apply. You are not prohibited from receiving compensation for services rendered for your development company on matters before city agencies, other than the BZA, if you file the appropriate statements required by R.C. 102.04(D). You can obtain a form for this purpose, and more information about the filing requirement, from the Commission.

Conclusion

As explained above, the Ohio Ethics Laws and related statutes do not prohibit you from serving on the City BZA. However, these protections against personal and business conflicts of interest place significant restrictions upon your participation in matters that directly and definitely affect your financial interests or the financial interests of parties in business with you if you were to serve. The Ohio Ethics Laws and related statutes are criminal laws, and failure to comply with the restrictions discussed in this opinion can result in criminal penalty. The application of these restraints varies depending on the facts and circumstances in each of the many fact patterns you have raised.

Matthew R. Vekasy
February 25, 2003
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On a final note, the Ethics Commission has held that the withdrawal of a public official from matters that create a conflict of interest may be detrimental to the functioning of his public agency. Adv. Op. No. 99-002. Further, such a situation may create the appearance of impropriety. These are factors you must consider when contemplating accepting an appointment to a public board that is entrusted with deciding matters that would affect your personal business interests and the business interests of parties with which you are closely connected. This advisory opinion does not reach a conclusion on the advisability of your proposed appointment.

If other members of the BZA were also required to withdraw from the same matters due to similar conflicts, then the BZA could be unable, or find it difficult, to act on a particular matter. See Att'y Gen. Op. No. 99-004 (Where all but one member of a board are required to abstain because of conflicts of interest, the one member, acting alone, cannot take an action that requires a "unanimous" vote of the board.). In addition, in such a situation, citizens may feel that they are being denied representation because you have placed your personal interests above the interests of the city.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on February 21, 2003. The opinion is based on the facts presented and 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. If you have any questions or desire additional information, please contact this Office again.

Sincerely,



Jennifer A. Hardin
Chief Advisory Attorney

cc: Ty Marsh, Chief of Staff of the Mayor's Office



OHIO ETHICS COMMISSION
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Advisory Opinion Number 92-019
November 20, 1992

Syllabus by the Commission:

(1) Division (D) of Section 102.03 of the Revised Code prohibits a city council member from voting, discussing, deliberating, or otherwise using the authority or influence of his public position, formally or informally, in actions of the city council regarding a proposed road extension if the council action would have a specific beneficial or detrimental impact upon his personal, pecuniary interests;

(2) Neither Division (D) of Section 102.03 of the Revised Code, nor any other provision of the Ethics Law, prohibits, per se, a city council member from appearing, as an individual, before council in order to protect his own private property interests, so long as he pursues a course of action that is available to any other citizen who is not a city council member;

(3) Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a city council member from accepting, soliciting, or using his authority and influence to secure any benefits which are selective, differential, or in disproportion to the benefits provided to other citizens or property owners.

* * * * *

You have asked if the Ohio Ethics Law and related statutes prohibit a city council member from participating in council actions with regard to a proposed road extension where the council member's residence is within close proximity to the proposed extension. You have also asked if the city council member may, as an individual resident of the city, appear before and individually advocate his personal views to council regarding the proposed roadway extension.

By way of history, you have explained that the city is considering a road extension project of a major thoroughfare. The project will extend the road about two-thirds of a mile through an area which is currently a city park. The proposed road will have four lanes with an anticipated speed limit of between 25 and 35 miles per hour.

A member of the city council owns and resides in a home about 150 feet from the right-of-way for the proposed road extension. There is a buffer of vegetation, consisting of the council member's rear yard and a portion of the metropolitan park, between the council member's home and the proposed road extension. You have explained that the roadway project contemplates the construction of an appropriate noise buffer along the entire border of the proposed road extension. You have explained that the council member is one of a number of property owners in the city who will experience a residual impact from the road extension. You have further stated

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that, due to the buffer between the roadway and the residence, "any aesthetic or economic detriment to such Council member is speculative."

The primary issue before city council, as you have explained it, is whether the road is of general benefit to the citizens of the city, such that a sufficiently valid municipal purpose exists for the expenditure of funds and disruption of the park involved in the extension of the road.

You have asked, first, if the city council member is prohibited from participating in council discussions and decision-making regarding the road extension project. R.C. 102.03 (D) provides as follows:

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.

A city council member is a "public official or employee" for purposes of R.C. 102.03 (D), R.C. 102.01 (B) and (C). See also Ohio Ethics Commission Advisory Opinions No. 80-007 and 88-004. The term "anything of value" has been described by the Commission to include any definite pecuniary benefit. See R.C. 102.01(G) and 1.03; Advisory Opinions No. 79-008, 85-006, 85-011, and 88-004. Specifically, the Commission has held that an increase or enhancement in the value of property, an opportunity or ability to sell property at a profit or for a commission, or any other benefit to property, falls within the definition of "anything of value." See Advisory Opinions No. 79-003, 79-008, 80-007, 88-005, and 92-013.

The Commission has held that R.C. 102.03 (D) prohibits a public official or employee from using the authority or influence of his public position, formally or informally, in any matter which would render a particular and definite pecuniary benefit or detriment to the value of property in which he has an interest. See Advisory Opinions No. 88-004, 90-013, and 92-013. Accordingly, the city council member in your question is prohibited, by R.C. 102.03 (D), from voting, discussing, deliberating, or otherwise using the authority or influence of his public position, formally or informally, with respect to any matter before city council which would provide a definite, pecuniary benefit or detriment to property he owns. See Advisory Opinions No. 79-003, 79-008, 88-004, 88-005, and 92-013.

A city council member is also prohibited, by R.C. 102.03 (D), from using the power and authority of his position, formally or informally, over any city official or employee, to secure anything of value for himself. See Advisory Opinion No. 90-003. Therefore, the city council member in the situation you described is prohibited, by R.C. 102.03 (D), from using the authority or influence of his position over city employees, or other city officials, with respect to an issue which affects property he owns.

In the situation you have discussed, the city council member's property is located approximately 150 feet from the right-of-way for the proposed road extension. In your letter, you have pointed out that the council member is one of a number of property owners in the city who will experience a "residual impact" from the road extension. You have further stated that, due to

the green space buffer between the roadway and the residence, "any aesthetic or economic detriment to such Council member is speculative."

The Ethics Commission has stated that a city council member is not prohibited, by R.C. 102.03 (D), from participating or voting on general legislation which provides a uniform benefit to all citizens within a political subdivision, or a large portion thereof. See Advisory Opinions No. 88-004 and 92-013. Thus, a city council member may participate or vote on general legislation which provides a uniform benefit to all citizens within the city, or a large portion of the citizens, but may not participate in matters which provide a particular and definite benefit or detriment to property in which he has an interest. Advisory Opinions No. 88-004 and 92-013. The fact that some other property owners in the city may also experience an impact from the road extension does not necessarily mean that the council member's property is not directly affected and that he may participate. See Advisory Opinion No. 88-004.

Additionally, you have stated that the greenspace buffer between the council member's property and the road right-of-way indicates that the detriment to the council member's property is speculative. A public official is prohibited, by R.C. 102.03 (D), from participating, formally or informally, with respect to development matters which affect land adjacent to or near the public official's property, where the development matters would result in a beneficial or detrimental financial impact upon the public official's property. In the situation you have described, the city council member's property is approximately 150 feet from the right-of-way for the proposed road extension. R.C. 102.03 (D) would prohibit the city council member from voting, discussing, deliberating, or otherwise using the authority or influence of his public position, formally or informally, with respect to a road extension in close proximity to his residence, where the road extension would have a beneficial or detrimental impact upon the value of his property. See Advisory Opinions No. 88-004, 88-005, and 92-013.

You have also asked if the city council member may, as an individual resident of the city, appear before and individually advocate his personal views to council regarding the proposed roadway extension.

As set forth above, R.C. 102.03 (D) prohibits a city council member from using the authority or influence of his public position in any way, formally or informally, in a matter which would render a definite pecuniary benefit or detriment to property in which he has an interest. The council member in your question is, therefore, prohibited from taking any formal or informal action in his role as a city council member with regard to the issues which would have an impact on his property. However, you have asked if the council member may individually advocate on behalf of his own personal property interests before city council, even though the council member is prohibited from participating in his official capacity as a council member.

When applying the Ethics Law to specific situations, the Ethics Commission must at times strike a delicate balance between the personal rights of an individual who serves as a public official and the necessary protection afforded the public against self-dealing and conflict of interest. When an individual seeks or holds public office or employment, that individual concedes certain other options. See generally Advisory Opinions No. 87-002, 87-004, 90-013, 91-003, 91-011, 92-006, 92-008, and 92-009. See also *State v. Morgan*, No. 2294 (Clark County Court of Appeals, May 28, 1987) (upholding the constitutionality of Ohio's financial disclosure

law, and stating that, "[c]andidates for elective office cannot reasonably expect the same degree of privacy enjoyed by non-candidates"). In light of the public trust and responsibility that must be honored and respected by a public official in the exercise of his power, prestige, and influence, and in exchange for the enjoyment of that power, prestige, and influence, the public official or employee must forego certain business opportunities, such as doing business with the public entity he serves, soliciting or accepting employment from certain prohibited sources, and representing clients before the entity he serves or, under certain circumstances, before any public agency. R.C. 2921.42 (A)(4), R.C. 102.03 (A) and (E), and 102.04 (A) and (C). In order to provide unbiased decision-making for all of the citizens represented and served by public officials and employees, the Ethics Law must, at times, limit the private activities of the public officials and employees. However, the Ethics Commission, in interpreting the Ethics Law, must ensure that reasonable and justifiable limits on public officials and employees, reasonably related to the public interest served, are imposed and also that the rights afforded to all citizens are realized by public officials and employees to the greatest extent possible. A public official or employee does not, by virtue of holding a public office or public employment, and within the limits established by the Ethics Law, waive all of his rights and privileges as a citizen of this State.

For example, in Advisory Opinion No. 90-013, the Ethics Commission was asked if a board member of a port authority is prohibited, by the Ohio Ethics Law, from filing a lawsuit against the port authority he serves, or from serving on the board of the port authority because he is a defendant in a lawsuit brought by the port authority. The Commission held:

The Constitution of the State of Ohio provides: 'All courts shall be open, and every person, for an injury done to him in his lands, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.' Ohio Const. art. I, Sec. 16. An individual cannot be denied access to the courts for redress of damages because of his status as a public employee. See generally State v. Barry, 123 Ohio St. 458, 463-64 (1931). Accordingly, the Ohio Ethics Law and related statutes do not prohibit the authority member from pursuing or defending a legal claim against the city or the authority.

Advisory Opinion No. 90-013. However, the Commission went on to state that the Ohio Ethics Law and related statutes do condition the activities of the public official, taken in his official capacity, with regard to any lawsuit he may pursue.

You have asked if the city council member is prohibited, by the Ohio Ethics Law, from appearing before council and advocating, as an individual resident, on behalf of his own personal property interests, regarding the roadway extension project.

R.C. 102.03 (D) prohibits a public official or employee from "us[ing] the authority or influence of his office or employment to secure anything of value . . . that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties." There is no question but that a city council member has a significant prominence and visibility in the city he serves. A council member cannot use "the authority and influence of his office" in any way to secure any benefit for himself that could manifest a substantial and improper influence upon him with respect to his duties. Clearly, as discussed fully above, R.C. 102.03 (D) prohibits the council member from voting on or officially discussing matters that affect his private economic

interests. However, nothing within the Ohio Ethics Law would prohibit a council member from advocating, as an individual, his own interests before council in order to secure action by the city with respect to his property, where he is representing his own interests, is not compensated for the representation, has not participated as a public official in the matter, and has not misused his position, over other city officials or employees, or otherwise. See R.C. 102.04 (C) (prohibiting a public official or employee, unless he meets a specific exemption, from providing personal services for compensation in a matter pending before any department, division, or board of the governmental agency he serves); R.C. 102.03 (A) (a public official or employee is prohibited from representing any person on a matter pending before any governmental agency, including his own, if he personally participated, as a public official, in that matter); and R.C. 102.03 (D). A public official or employee will not be considered to have "use[d] the authority or influence of his office or employment" if he appears, as an individual, before council to protect his own property interests, and if he pursues a course of action, with respect to his own property, that is available to any other citizen who is not a public official or employee. When pursuing a course of action, the public official or employee must follow the same procedures, comply with the same requirements, and be limited to the same access to other officials and employees as any citizen who is not a public official or employee. For example, if an application to appeal a matter must be accompanied by a fee, the public official must submit the necessary fee. The official may not pursue the matter through any channels other than those available to any other citizen. If, in order to address city council, a citizen must submit his name and a summary of his comments, and must wait in a queue of other citizens desiring to address council, a public official must comply with these requirements.

Therefore, R.C. 102.03 (D) does not prohibit a city council member who owns property in the city from appearing before city council, and advocating his individual views on a matter affecting his private property, in the same manner available to any other private citizen. See generally Advisory Opinion No. 90-013. The city council member in your question is not prohibited from appearing and offering testimony, in behalf of his own personal interests, before city council, or from making a statement before council, as a private citizen, in a matter which affects his personal property interests. However, a city council member is prohibited from using his official position or authority, in any way, formally or informally, with regard to a matter which affects his property interests, and from otherwise acting in a manner which is not available to any other private citizen. For example, a city council member is prohibited from discussing his property interests with a city employee or city official in a context or circumstance where his access to the employee or official is other than the access available to any other private citizen.

Further, a city council member is prohibited from misusing his official position or authority to secure a thing of value which would otherwise be proper but which is selective, differential, or in disproportion to the benefits provided to other landowners. See Advisory Opinions No. 92-010 and 92-013. The Ethics Commission has stated, for example, that R.C. 102.03 (D) would prohibit a village council member from misusing the authority or influence of his office to secure infrastructure improvements, even where the improvements are of benefit to the entire village or a large portion thereof, if the benefit to the council member's property is selective, differential, or in disproportion to the benefit provided to other property in the village. Therefore, R.C. 102.03 (D) prohibits a city council member from acting in any way to secure any benefit to his property, even if other properties in the city will be affected, if the benefits to the official's property are selective, differential, or disproportionate. Also, Division (E) of Section

102.03 prohibits the city council member from accepting or soliciting anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties, even if he has not used the authority or influence of his office to secure the thing of value. See Advisory Opinion No. 92-013. Therefore, R.C. 102.03 (E) prohibits a city council member from merely receiving benefits which are selective, differential, or in disproportion to the benefits provided to other property in the city, even if he abstains from voting or otherwise participating in council's decision to provide the improvements. Id.

You should also note the requirement of R.C. 102.03 (B), which provides as follows:

No present or former public official or employee shall disclose or use, without appropriate authorization, any information acquired by him in the course of his official duties which is confidential because of statutory provisions, or which has been clearly designated to him as confidential when such confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary to the proper conduct of government business.

R.C. 102.03 (B) prohibits a public official or employee from disclosing or using, without appropriate authorization, any confidential information acquired in the course of his official position. There is no time limitation on this prohibition, and the city council member is bound by this prohibition while he serves and after he leaves his public position, so long as the information is confidential. See Advisory Opinion No. 88-009.

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.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that: (1) Division (D) of Section 102.03 of the Revised Code prohibits a city council member from voting, discussing, deliberating, or otherwise using the authority or influence of his public position, formally or informally, in actions of the city council regarding a proposed road extension if the council action would have a specific beneficial or detrimental impact upon his personal, pecuniary interests; (2) Neither Division (D) of Section 102.03 of the Revised Code, nor any other provision of the Ethics Law, prohibits, per se, a city council member from appearing, as an individual, before council in order to protect his own private property interests, so long as he pursues a course of action that is available to any other citizen who is not a city council member; and (3) Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a city council member from accepting, soliciting, or using his authority and influence to secure any benefits which are selective, differential, or in disproportion to the benefits provided to other citizens or property owners.

Marguerite H. Lehner

Marguerite H. Lehner, Chair
Ohio Ethics Commission



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Advisory Opinion Number 92-013
August 14, 1992

Syllabus by the Commission:

(1) This advisory opinion expressly overrules the holding of Advisory Opinion No. 80-007 that property owners whose property will benefit from infrastructure improvements have an "interest" in a public contract for purposes of Section 2921.42 of the Revised Code. The holding of Advisory Opinion No. 80-007 that Division (D) of Section 102.03 of the Revised Code prohibits a city council member from participating in decisions or voting on improvements made as part of a downtown revitalization project which would benefit his property is not overruled and is expressly affirmed;

(2) A village council member who owns property which will benefit from an infrastructure improvement made by or for the use of his village as part of a neighborhood revitalization program neither has an interest in the profits or benefits of a public contract nor occupies a position of profit in the prosecution of a public contract for purposes of Section 2921.42 of the Revised Code, provided that the benefit to the council member's property is not selective, differential, or in disproportion to the benefit provided to other property in the political subdivision or the portion thereof receiving the improvements;

(3) Division (D) of Section 102.03 of the Revised Code prohibits a village council member from voting, deliberating, participating in discussions, or otherwise using his official authority or influence with regard to village council's payment for infrastructure improvements made as part of a neighborhood revitalization program which would provide a definite and particular pecuniary benefit to his property. This prohibition does not apply if the improvements provide a general, uniform benefit to the entire political subdivision or a large portion thereof, provided that the benefit to the council member's property is not selective, differential, or in disproportion to the benefit provided to other property in the political subdivision or the portion thereof receiving the improvements.

* * * * *

Your request for an advisory opinion raises the issue whether the Ohio Ethics Law and related statutes prohibit village council members from benefiting from infrastructure improvements made as part of a neighborhood revitalization program, and funded by village moneys and a Community Development Block Grant (CDBG).

You state that the county planning commission administers CDBG funds for the board of county commissioners. The planning commission selected a village within the county to receive

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CDBG funds in order to pay for a comprehensive housing and neighborhood revitalization program. Part of these moneys will fund public works projects which include a large drainage project and sidewalk reconstruction. The grant agreement is between the board of county commissioners and the State of Ohio; however, the agreement is for the benefit of the village and the village is contributing \$4,000 toward the \$35,000 cost of the sidewalk reconstruction project.

In Advisory Opinion No. 80-007, the Commission addressed a situation in which downtown property owned by city council members would benefit from a revitalization project through street paving, sidewalk construction, tree planting, and improved lighting. Advisory Opinion No. 80-007 states that property owners in the area had initiated a petition that the city undertake the infrastructure improvements and agreed to be assessed approximately one-half of the cost of the project with the balance paid from general obligation bonds funded by a direct charge against the city's general fund. In analyzing the issue of public improvements, the opinion relied upon Section 2921.42 of the Revised Code, and it is thus necessary to examine the provisions of that Section.

Division (A) of Section 2921.42 of the Revised Code provides in pertinent part:

(A) No public official shall knowingly do any of the following:

(1) Authorize, or employ the authority or influence of his office to secure authorization of any public contract in which he, a member of his family, or any of his business associates has an interest; . . .

(3) During his term of office or within one year thereafter, occupy any position of profit in the prosecution of a public contract authorized by him or by a legislative body, commission, or board of which he was a member at the time of authorization, and not let by competitive bidding or let by competitive bidding in which his is not the lowest and best bid;

(4) Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which he is connected. (Emphasis added.)

The term "public official" is defined in R.C. 2921.01 (A) for purposes of R.C. 2921.42 to include any elected or appointed officer or any employee or agent of any political subdivision of the state. In Advisory Opinion No. 80-007, the Commission applied Section 2921.42 to city council members. A village council member is also a "public official" for purposes of R.C. 2921.42 and subject to the prohibitions therein. See Ohio Ethics Commission Advisory Opinion No. 79-005. An "interest" which is referenced in Divisions (A)(1) and (A)(4) must be definite and direct. See Advisory Opinions No. 78-005 and 81-008.

The term "public contract" is defined for purposes of Section 2921.42 in Division (E) of that Section, which reads:

(E) As used in this section, "public contract" means any of the following:

CDBG funds in order to pay for a comprehensive housing and neighborhood revitalization program. Part of these moneys will fund public works projects which include a large drainage project and sidewalk reconstruction. The grant agreement is between the board of county commissioners and the State of Ohio; however, the agreement is for the benefit of the village and the village is contributing \$4,000 toward the \$35,000 cost of the sidewalk reconstruction project.

In Advisory Opinion No. 80-007, the Commission addressed a situation in which downtown property owned by city council members would benefit from a revitalization project through street paving, sidewalk construction, tree planting, and improved lighting. Advisory Opinion No. 80-007 states that property owners in the area had initiated a petition that the city undertake the infrastructure improvements and agreed to be assessed approximately one-half of the cost of the project with the balance paid from general obligation bonds funded by a direct charge against the city's general fund. In analyzing the issue of public improvements, the opinion relied upon Section 2921.42 of the Revised Code, and it is thus necessary to examine the provisions of that Section.

Division (A) of Section 2921.42 of the Revised Code provides in pertinent part:

(A) No public official shall knowingly do any of the following:

(1) Authorize, or employ the authority or influence of his office to secure authorization of any public contract in which he, a member of his family, or any of his business associates has an interest; . . .

(3) During his term of office or within one year thereafter, occupy any position of profit in the prosecution of a public contract authorized by him or by a legislative body, commission, or board of which he was a member at the time of authorization, and not let by competitive bidding or let by competitive bidding in which his is not the lowest and best bid;

(4) Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which he is connected. (Emphasis added.)

The term "public official" is defined in R.C. 2921.01 (A) for purposes of R.C. 2921.42 to include any elected or appointed officer or any employee or agent of any political subdivision of the state. In Advisory Opinion No. 80-007, the Commission applied Section 2921.42 to city council members. A village council member is also a "public official" for purposes of R.C. 2921.42 and subject to the prohibitions therein. See Ohio Ethics Commission Advisory Opinion No. 79-005. An "interest" which is referenced in Divisions (A)(1) and (A)(4) must be definite and direct. See Advisory Opinions No. 78-005 and 81-008.

The term "public contract" is defined for purposes of Section 2921.42 in Division (E) of that Section, which reads:

(E) As used in this section, "public contract" means any of the following:

(1) The purchase or acquisition, or a contract for the purchase or acquisition of property or services by or for the use of the state or any of its political subdivisions, or any agency or instrumentality of either;

(2) A contract for the design, construction, alteration, repair, or maintenance of any public property. (Emphasis added.)

It is apparent that Divisions (E)(1) and (E)(2) address different types of transactions. A public contract exists for purposes of Division (E)(1) whenever the State or a political subdivision either purchases or acquires property or services, or enters into a contract for the purchase or acquisition of property and services. A public contract exists for purposes of Division (E)(2) whenever the State or a political subdivision enters into a contract for the design, construction, alteration, repair, or maintenance of public property. A transaction may fall within the definition of a public contract for both Divisions (E)(1) and (E)(2). See generally Advisory Opinion No. 80-001 (a political subdivision contracting with a firm for the construction of a municipal building). However, a transaction which is a public contract as defined in Division (E)(1) is not necessarily always a public contract as defined in Division (E)(2) since the definition of "public contract" in Division (E)(1) is broader than the definition in Division (E)(2).

The Ethics Commission held in Advisory Opinion No. 80-007 that infrastructure improvements made by a political subdivision as part of a revitalization project fall within the statutory definition of "public contract" for purposes of Section R.C. 2921.42. Advisory Opinion No. 80-007 quotes both Divisions (E)(1) and (E)(2) but does not specify which statutory definition of "public contract" was relied upon to determine that infrastructure improvements made by a political subdivision as part of an urban revitalization project fall within the statutory definition of "public contract" for purposes of Section R.C. 2921.42. The portion of the opinion which holds that infrastructure improvements are public contracts reads:

[A] project for the revitalization of a downtown area, which involves the design, construction, repair, or other work on city streets and sidewalks in the area is a "public contract" for purposes of Section 2921.42. (Emphasis added.)

It appears from this language that the definition provided by Division (E)(2) was used. However, as discussed below, despite which Division is relied upon, an examination of the respective definitions is necessary to respond to your question.

Advisory Opinion No. 80-007 holds that the affected city council members would have an "interest" in the city's infrastructure improvements for purposes of R.C. 2921.42. This portion of the opinion reads:

[A] person whose property will directly benefit from the project, and who has agreed to a direct assessment of one-half of the cost of the project, is "interested" in the public contract for purposes of this Section. (Emphasis added.)

(The opinion did not, however, address the property owner's "interest" in light of the fact that the property owners who would benefit from the infrastructure improvements, including the

city council members, would be assessed approximately one-half of the cost of the project.) Therefore, the city council members were advised that 2921.42 prohibited them from participating in discussions or voting on the project. The second syllabus paragraph of the opinion reads:

Section 2921.42 of the Revised Code prohibits a city council member from knowingly participating in discussions or voting to approve a public contract for downtown revitalization which would benefit his property. (Emphasis added.)

Although not specifically referenced in Advisory Opinion No. 80-007, it appears from this language that the holding is based upon the prohibition imposed by Division (A)(1) which, as described above, prohibits a public official from authorizing, or using his official authority or influence to secure authorization of, a public contract in which he would have an interest.

However, Advisory Opinion No. 80-007 does not address the effect of the prohibitions imposed by R.C. 2921.42 (A)(4) and (A)(3), as set forth above. R.C. 2921.42 (A)(4) prohibits a public official from merely having an interest in the profits or benefits of a public contract "entered into by or for the use of the political subdivision or governmental agency or instrumentality with which he is connected" even where he has not authorized the public contract or used the authority or influence of his office to secure the public contract for himself. Such interest, however, must be definite and direct, as discussed above. Division (A)(4) was not addressed in Advisory Opinion No. 80-007 even though the opinion held that the council members whose property would benefit from the project were "interested" in a public contract for purposes of R.C. Section 2921.42, and accordingly, applied the prohibition of Division (A)(1) to the actions of the council members.

Also, Advisory Opinion No. 80-007 does not address the effect of the prohibition imposed by Division (A)(3) of R.C. 2921.42. As set forth above, R.C. 2921.42 (A)(3) prohibits a public official from occupying "a position of profit" in the prosecution of a public contract authorized by him or by a legislative body of which he was a member at the time of authorization, and not let by competitive bidding or let by competitive bidding in which his is not the lowest and best bid. A public official who is a member of a legislative body is subject to the prohibition of Division (A)(3), even where he has abstained from deliberating, voting upon, or otherwise authorizing the public contract. See Advisory Opinion No. 87-008. Division (A)(3) was not addressed in Advisory Opinion No. 80-007 even though the opinion determined that the city council members' property would benefit from the infrastructure improvements and city council would be required to adopt a resolution of necessity and vote on legislation in order for the city to proceed with the revitalization project.

Due to the fact that the prohibitions of Divisions (A)(4) and (A)(3) were not addressed and since considerable precedent construing R.C. 2921.42 has been established subsequent to the issuance of Advisory Opinion No. 80-007, it is necessary to re-examine whether public officials are prohibited from benefiting from infrastructure improvements funded by CDBG moneys as part of a neighborhood revitalization program. The issues to be determined afresh are whether infrastructure improvements made by a political subdivision as part of a neighborhood revitalization project are "public contracts" for purposes of R.C. 2921.42 as that term is defined

in either Division (E)(1) or (E)(2), and if so, whether a public official who owns property that would benefit from the improvements would have a definite and direct interest in the public contracts, or would profit from the public contracts.

The Ethics Commission has held that a political subdivision's award of a low-interest loan or grant to property owners within the political subdivision as part of a housing and neighborhood revitalization program falls within the definition of the term "public contract" as defined in Division (E)(1) because housing and community development services are being purchased or acquired by or for the use of the political subdivision. See Advisory Opinions No. 83-005, 84-011, and 85-002. Also, the Commission has held that other methods by which a political subdivision purchases or acquires community development and revitalization and urban renewal services fall within the definition of the term "public contract" as defined in Division (E)(1). See Advisory Opinion No. 88-006 (land reutilization program in which participants purchase vacant lots and agree to construct improvements upon the lots or utilize them for a useful purpose); Advisory Opinion No. 89-008 (a tax abatement to property owners in exchange for the development or renovation of their property); and Advisory Opinion No. 91-011 (the lease or sale of city financed housing units built on city property). The Ethics Commission has further held that a property owner's "interest" in the community development and urban revitalization and renewal grants, loans, or other benefits is definite and direct, and that the property owners directly profit therefrom, such that R.C. 2921.42 (A)(1), (3), and (4) impose restrictions upon officers and employees of a political subdivision who wish to participate in housing and urban revitalization programs which are established by or for the benefit of the political subdivision with which they serve or are employed. See Advisory Opinions No. 83-005, 84-011, 85-002, 88-006, 89-008, and 91-011.

In the instant situation, it is apparent that when a person or firm is paid consideration to provide services related to the construction of drainage and sidewalk projects that a public contract exists for purposes of both Divisions (E)(1) and (E)(2). The village is purchasing and acquiring and entering into a contract to purchase and acquire design and construction services, and it is a contract for the design and construction of public property. The issue thus becomes whether a public official whose property will benefit from an infrastructure improvement has a definite and direct interest in the profits or benefits of this public contract for purposes of R.C. 2921.42 (A)(1) and (A)(4), and whether he would profit from the public contract for purposes of R.C. 2921.42 (A)(3).

The opinion turns first to a discussion of R.C. 2921.42 (A)(1) and (4). As explained above, since a political subdivision acquires or purchases housing rehabilitation and community development services from property owners who participate in a housing rehabilitation loan or land reutilization program, receive a tax abatement, or lease or purchase a housing unit financed and constructed by the political subdivision, these transactions are "public contracts" as that term is defined in Division (E)(1), and the property owners have a definite and direct interest in these "public contracts" and directly profit from these "public contracts." The loan, grant, tax abatement, property, or housing goes directly to the property owner, and the property owner provides the community development service. The property owner has a definite and direct interest in these public contracts. Accordingly, R.C. 2921.42 (A)(1) and (4) impose restrictions upon an officer or employee of a political subdivision who wishes to participate in housing and

The above analysis illustrates that Advisory Opinion No. 80-007 is incorrect in holding that property owners whose property will benefit from infrastructure improvements made by a political subdivision as part of an urban renewal or revitalization project have a definite and direct interest in the public contracts for the improvements. As a consequence, since village council members who own property which will benefit from an infrastructure improvement made by or for the use of the village as part of a neighborhood revitalization program do not have a direct interest in the profits or benefits of a public contract for purposes of Revised Code Section 2921.42, this advisory opinion expressly overrules the holding of Advisory Opinion No. 80-007 that property owners whose property would benefit from infrastructure improvements have an "interest" in a public contract for purposes of R.C. 2921.42. Therefore, R.C. 2921.42 (A)(4) does not prohibit village council members who own property within the village from benefiting from an infrastructure improvement which is part of a comprehensive neighborhood revitalization program administered by the county planning commission and funded, in part, by village funds. But see discussion below of when a public official will be deemed to have an interest in an infrastructure improvement.

The issue remains whether R.C. 2921.42 (A)(3) prohibits the council members from benefiting from the infrastructure improvements made as part of the comprehensive housing and neighborhood revitalization program. As stated above, this issue was not addressed in Advisory Opinion No. 80-007. R.C. 2921.42 (A)(3), does not require that a public official "[h]ave an interest in the profits or benefits of a public contract," but prohibits a public official from "occupy[ing] any position of profit in the prosecution of a public contract" which he or his legislative body authorized, and which was not let by competitive bidding and not the lowest and best bid. A public official who is a member of a legislative body is subject to the prohibition of Division (A)(3), even where he has abstained from deliberating, voting upon, or otherwise authorizing the public contract. See Advisory Opinion No. 87-008.

The Ethics Commission has adhered to the rule of statutory construction that if a statute uses two different terms, then each term is presumed to have a different meaning. See Advisory Opinion No. 76-008. The General Assembly's use of the words "occupy any position of profit in the prosecution of a public contract" in R.C. 2921.42 (A)(3) specifically distinguishes a different type of situation than having "an interest in the profits or benefits of a public contract." See Dougherty v. Torrence, 2 Ohio St. 3d 69, 70 (1982) (effect must be given to words used in a statute); Dungan v. Kline, 81 Ohio St. 371, 380-81 (1910) (the presumption is that every word in a statute is designed to have effect); Advisory Opinion No. 74-001 ("it is to be assumed that the Legislature used the language contained in a statute advisedly and intelligently and expressed its intent by the use of the words found in the statute").

As explained above, the term "public contract" is statutorily defined; however, the word "profit" is not defined for purposes of R.C. 2921.42 (A)(3). It is a primary rule of statutory construction that words used in a statute which are not defined must be construed according to rules of grammar and common usage. See R.C. 1.42. The word "profit" is defined in The New Lexicon Webster's Dictionary of the English Language as "to obtain financial gain or other benefit" The New Lexicon Webster's Dictionary of the English Language 798 (1988 Edition).

As explained above, an "interest" which is prohibited by Division (A)(4) must be definite and direct and may be either pecuniary or fiduciary in nature. However, the term "profit" connotes only a pecuniary or financial gain or benefit. An "interest" under Division (A)(4) thus identifies a broader prohibition than occupying a "position of profit in the prosecution of a public contract." For example, a public official may be deemed to have an "interest" in a public contract, but not "profit" from the public contract, if his interest is only fiduciary, such as serving as an uncompensated officer or trustee of a nonprofit corporation. Indeed, the previous advisory opinions in which both Divisions (A)(3) and (A)(4) were applicable involved situations in which the public official was determined to have a financial "interest" in the profits or benefits of a public contract for purposes of Division (A)(4) and to "profit" from the public contract for purposes of Division (A)(3). See Advisory Opinions No. 88-003, 88-006, 89-006, 89-008, 90-003, 90-005, 91-011, and 92-002. See also Advisory Opinion No. 88-008.

Thus, it logically follows that if a public official's interest in the profits and benefits of a public contract must be "definite and direct" for purposes of Division (A)(4), then the position of profit which the public official occupies in the prosecution of the public contract must also be definite and direct for purposes of Division (A)(3). See R.C. 2901.04 (A) (Revised Code sections which define offenses or penalties shall be strictly construed against the state and liberally construed in favor of the accused). An "indirect" rather than a definite and direct standard for either Division (A)(4) or (A)(3) would effectively render it difficult for the State or political subdivisions to enter into public contracts or would bar substantial numbers of individuals from public office or employment. See generally Advisory Opinion No. 78-006. See also discussion below.

As explained above, a public official who owns property which will benefit from an infrastructure improvement made by or for the use of his political subdivision as part of a neighborhood revitalization program does not have a direct interest in a public contract for purposes of Divisions (A)(1) and (A)(4). In such a situation, it would be inconsistent with the precedent established in previous advisory opinions to determine that the "position of profit" which a public official would derive from a public contract need not also be definite and direct. Therefore, the prohibition of R.C. 2921.42 (A)(3) will apply whenever a public official realizes an advantage, gain, or benefit, which is a definite and direct result of a public contract which he or a body of which he was a member authorized, and which was not competitively bid and the lowest and best bid.

The issue, then, becomes whether the council members who own property which will benefit from the infrastructure improvements made as part of the comprehensive housing and neighborhood revitalization program occupy a position of profit in the prosecution of a public contract which is definite and direct for purposes of Division (A)(3).

The Ethics Commission has held that property owners who participate in a housing rehabilitation loan or land reutilization program, receive a tax abatement, or lease or purchase a housing unit financed and constructed by the political subdivision occupy a position of profit in the prosecution of these "public contracts" for purposes of Division (A)(3) since they realize an advantage, gain, or benefit from the loan, grant, tax abatement, property, or housing in exchange for providing the community development service. See Advisory Opinions No. 88-006, 89-008,

and 91-011. It is apparent the advantage, gain, or benefit realized by the property owners is definite and direct. Accordingly, R.C. 2921.42 (A)(3) imposes restrictions upon an officer or employee of a political subdivision who wishes to participate in housing and neighborhood revitalization programs which are established by or for the benefit of the political subdivision with which he serves or is employed. Id.

In an instance where a political subdivision is entering into a contract with a firm to construct infrastructure improvements, the consideration or benefit for performing these services is not being provided to the property owner. Also, the property owner is not providing a service to the political subdivision or performing the work under the contract. In the case of a firm performing the contract, the position of profit which it occupies is a definite and direct result of performing services under a public contract, and receiving payment therefor. However, a property owner does not realize the same kind of advantage, gain, or benefit from a political subdivision's contract with a firm for public infrastructure improvements as he does from a loan, or grant, or tax abatement that is awarded directly to him. Therefore, a property owner's "position of profit in the prosecution of a public contract" is not direct for purposes of R.C. 2921.42 (A)(3).

The Ethics Commission has also held that an individual who has an ownership interest in a business occupies a position of profit in the contracts of the business for purposes of R.C. 2921.42 (A)(3). See Advisory Opinion No. 90-003. An employee of a business may also occupy a position of profit in the contracts of his employer if he would financially benefit from the contracts, and under certain other limited circumstances. See Advisory Opinion No. 92-002. Therefore, an owner and perhaps an employee of the firm that performs the work to repair the sidewalks or construct the drainage project would have a definite and direct advantage, gain, or benefit in the prosecution of the public contract. However, you have provided no facts indicating that in this instance village officials own or are employed by the construction firm, or would otherwise profit from the firm's work.

Therefore, while the drainage and sidewalk reconstruction programs are public contracts, it does not necessarily follow that the prohibition of Division 2921.42 (A)(3) will apply to any village officer or employee unless the officer or employee occupies a definite and direct position of profit in the public contracts as explained by the examples described above. While it is undisputed that property owners in an area of the village that will receive infrastructure improvements may benefit from the infrastructure improvements, see R.C. 102.03 (D) discussed below, and may "indirectly" realize an advantage, gain, or benefit from the public contracts, no transaction exists which would indicate that the property owners occupy a direct position of profit in the public contracts.

Therefore, R.C. 2921.42 (A)(3) does not prohibit village council members who own property within the village from benefiting from an infrastructure improvement which is part of a comprehensive neighborhood revitalization program administered by the county planning commission and funded, in part, by village funds.

It should be noted that to hold that public officials who own property which would benefit from infrastructure improvements have an interest, or occupy a position of profit, in the

public contracts for the improvements would effectively render it difficult or impossible for a political subdivision to undertake infrastructure improvements. Even if the officials who owned property which would be benefited by the improvements abstained from deliberating, voting upon, or otherwise authorizing the public contracts for the improvements, such a holding would require that whenever a political subdivision widens a road or installs water and sewer lines, it leave a narrow band of unimproved pavement in front of a public official's property or detour a pipeline away from the official's property, or would prevent the political subdivision from making any improvements if property owned by public officials would be benefited. See R.C. 1.49 (the consequences of a particular construction may be considered in interpreting a statute). However, it must be noted that a public official may well be deemed to have an interest in the profits or benefits or occupy a position in the prosecution, of a public contract in circumstances where the benefit to the council member's property is selective, differential, or in disproportion to the benefit provided to other property in the political subdivision or a portion thereof. For example, such a situation would occur if a council member owned a large tract of undeveloped land and was the only landowner in the political subdivision which would receive the improvements. In such a situation, it is apparent that the council member would have a definite and direct interest in, and profit from, the improvements.

The issue remains whether the village council members may participate in actions of village council if they own property which will benefit from the infrastructure improvements, even though the prohibitions of R.C. 2921.42 are generally inapplicable in this instance.

As explained above, the holding of Advisory Opinion No. 80-007 as it pertains to R.C. 2921.42 is incorrect. However, Advisory Opinion No. 80-007 also held that R.C. 102.03 (D) prohibits a city council member from participating in decisions or voting on improvements made as part of a downtown revitalization project which would benefit his property.

R.C. 102.03 (D) reads as follows:

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.

A "public official or employee" is defined for purposes of R.C. 102.03 to include any person who is elected or appointed to an office of any board, commission, or authority of a village. See R.C. 102.01 (B) and (C). A member of village council is a "public official or employee" as defined for purposes of R.C. 102.03, and is, therefore, subject to the prohibitions of that Section.

The term "anything of value" is defined for purposes of R.C. 102.03 in R.C. 1.03 to include money, any interest in realty, and every other thing of value. See R.C. 102.01 (G). For example, the Ethics Commission has held that an enhancement in the value of property, an opportunity or ability to sell property at a profit or commission, or other benefit to property is a thing of value. See Advisory Opinion No. 88-004. See also Advisory Opinions No. 79-003, 79-008, 80-007, 85-006, and 88-005.

R.C. 102.03 (D) prohibits a public official or employee from participating, formally or informally, in a particular matter which would result in a definite and particular, personal pecuniary benefit being realized by the official or employee, his family member, business associate, or other party where the official or employee would be subject to a conflict of interest. See Advisory Opinions No. 88-004, 88-005, 89-005, and 89-008.

The Ethics Commission, in Advisory Opinion No. 88-004, recognized that, for purposes of R.C. 102.03 (D), in certain instances a public official will realize a definite and particular personal pecuniary benefit from public infrastructure improvements, holding:

[T]he widening of a road in front of a council member's property or the installation of water or sewer lines which would service a member's property are matters which directly affect the value of the property or provide a definite and particular pecuniary benefit to the property, such that the council member's independence of judgment could be impaired by his personal interests. Therefore, a member of city council may not vote, deliberate, or participate in discussions to widen a road or install water and sewer lines which would serve or benefit property in which he has an interest. This direct and definite benefit to property resulting from the installation of water or sewer lines should be contrasted to the construction of a new water tower or sewer plant, which would provide a uniform benefit to all citizens within the city, and would benefit a particular piece of property only in a general or indefinite manner. (Emphasis added.)

See also Advisory Opinion No. 85-006. Therefore, while Advisory Opinion No. 80-007 incorrectly applied the prohibition of R.C. 2921.42, the Commission believes that Advisory Opinion No. 80-007 is correct in its application of R.C. 102.03 (D). R.C. 102.03 (D) prohibits a public official from participating or voting in matters which provide a particular and definite pecuniary benefit to property in which he has an interest. See also Advisory Opinions No. 85-006 and 88-004. However, R.C. 102.03 (D) would not prohibit a public official from participating or voting on general legislation which provides a uniform benefit to all citizens within the political subdivision, or a large portion thereof. See Advisory Opinions No. 85-006 and 88-004. Applying the reasoning of Advisory Opinions No. 85-006 and 88-004 to the instant situation, a village council member may participate or vote on general legislation which provides a uniform benefit to all citizens within the village, or a large portion thereof, but may not participate in matters which provide a particular and definite pecuniary benefit to property in which he has an interest.

R.C. 102.03 (D) would however prohibit a village council member from misusing the authority or influence of his office to secure infrastructure improvements even where the improvements are of benefit to the entire village or a large portion thereof if the benefit to the council member's property is selective, differential, or in disproportion to the benefit provided to other property in the political subdivision or the portion thereof receiving the improvements. Also, Division (E) of Section 102.03 prohibits a public official or employee from soliciting or receiving anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties, even if he has not used the authority or influence of his office to secure the thing of value. See Advisory Opinion No. 90-004. Therefore, R.C. 102.03 (E) prohibits a city council member from merely receiving benefits which are selective,

differential, or in disproportion to the benefits provided to other property in the political subdivision or a portion thereof, even if he abstains from voting or otherwise participating in council's decision to provide the improvements.

You state that officials from the county planning commission discussed the CDBG grant with the village's mayor and village manager and appeared before village council to provide information. The county planning commission requested that the village council indicate its support for the program. Accordingly, the village council passed a resolution declaring that the village council supports the county planning commission's proposed grant application. You have stated that village council will certify that it will set aside \$4,000 for its share of the \$35,000 sidewalk reconstruction project.

You described the drainage project as "large." The Ethics Commission has held that generally, large-scale comprehensive infrastructure improvements are designed for the general and uniform benefit of the entire political subdivision, or a large portion thereof, and thus are the type of action in which the village council members may participate even though they own property that will benefit from the improvements. However, the application of R.C. 102.03 (D) and (E) is dependent upon the facts and circumstances of each individual situation. See Advisory Opinion No. 87-008. Also, the Ethics Commission's function in rendering advisory opinions is not a fact-finding process. See Advisory Opinions No. 75-037, 90-013, and 92-003. An advisory opinion explains the prohibitions imposed by the Ethics Law and related statutes and sets forth the standards and criteria which must be observed in order to avoid a violation of the law. See Advisory Opinion No. 90-013. Therefore, this opinion cannot determine whether the drainage project would be of general and uniform benefit but will explain the standards to which a council member who owns property which will benefit from infrastructure improvements is subject.

You described the sidewalk reconstruction as "minor." This suggests that the project only encompasses a small portion of the village rather than a large-scale comprehensive infrastructure improvement. Therefore, if a village council member owns property which would benefit from the sidewalk reconstruction, then R.C. 102.03 (D) would prohibit him from participating in village council's appropriation of the \$4,000 for its share of the project despite the fact that CDBG funds will pay for most of the project's cost. See Advisory Opinion No. 80-007. However, the fact that a village council member's land would benefit from an infrastructure improvement does not mean that R.C. 102.03 prohibits the village from making the improvement, or requires that the village leave a narrow band of unimproved pavement in front of a public official's property, unless the benefit to the council member's property is selective, differential, or in disproportion to the benefit provided to other property in the political subdivision or the portion thereof receiving the improvements. See Advisory Opinion No. 88-004. Rather, Advisory Opinion No. 88-004 holds that R.C. 102.03 (D) prohibits a public official from participating in the decision-making process of his political subdivision in matters which provide a particular and definite pecuniary benefit to his property.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that:

- (1) This advisory opinion expressly overrules the holding of Advisory Opinion No. 80-007 that property owners whose property will benefit from infrastructure improvements have an "interest" in a public contract for purposes of Section 2921.42 of the Revised Code. The holding of

Advisory Opinion No. 80-007 that Division (D) of Section 102.03 of the Revised Code prohibits a city council member from participating in decisions or voting on improvements made as part of a downtown revitalization project which would benefit his property is not overruled and is expressly affirmed; (2) A village council member who owns property which will benefit from an infrastructure improvement made by or for the use of his village as part of a neighborhood revitalization program neither has an interest in the profits or benefits of a public contract nor occupies a position of profit in the prosecution of a public contract for purposes of Section 2921.42 of the Revised Code, provided that the benefit to the council member's property is not selective, differential, or in disproportion to the benefit provided to other property in the political subdivision or the portion thereof receiving the improvements; and (3) Division (D) of Section 102.03 of the Revised Code prohibits a village council member from voting, deliberating, participating in discussions, or otherwise using his official authority or influence with regard to village council's payment for infrastructure improvements made as part of a neighborhood revitalization program which would provide a definite and particular pecuniary benefit to his property. This prohibition does not apply if the improvements provide a general, uniform benefit to the entire political subdivision or a large portion thereof, provided that the benefit to the council member's property is not selective, differential, or in disproportion to the benefit provided to other property in the political subdivision or the portion thereof receiving the improvements.


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