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May 8, 2015

Kevin M. Butler
Director of Law
City of Lakewood
12650 Detroit Avenue
Lakewood, Ohio 44107

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LAW DEPARTMENT

Dear Mr. Butler:

On May 4, 2015, the Ohio Ethics Commission received your letter requesting further advice from the Commission regarding the ability of a city council member and the mayor to participate in matters affecting the closing of Lakewood Hospital. Your additional questions arise from the answers that were provided in an advisory opinion that was sent to you on May 1, 2015.

Key Facts

This opinion incorporates the facts pertaining to the council member and the mayor that were explained in your first request letter and a subsequent e-mail:

The Member of Council and the Law Firm

- A city council member, Ryan Nowlin, is a partner in a law firm that represents the Lakewood Hospital Foundation (foundation) on general matters.
- The law firm is not advising the foundation regarding its future if Lakewood Hospital is closed or any other matter that may go before city council regarding the closing of Lakewood Hospital and the opening of a family health care clinic.
- A partner in the law firm, Joseph Gibbons, serves as an unpaid trustee on the board of the Lakewood Hospital Association. Mr. Gibbons is not an elected official.
- An associate attorney in the law firm serves as an unpaid trustee on the board of the foundation.

The Mayor, His Wife, and the Foundation Board

- The Mayor's wife serves as member of the foundation's board of trustees.

Answers Provided in the First Opinion

The advisory opinion that was sent to you on May 1, 2015 explained that:

- The mayor, whose wife is member of the foundation's board of trustees, cannot participate in decisions regarding the closing of Lakewood Hospital if the proposed agreement with the Cleveland Clinic would result in the dissolution or alteration of the foundation from its present form.
- The council member, whose law partner serves on the board of the LHA, cannot participate in decisions regarding the closing of Lakewood Hospital because his law partner has a fiduciary interest in the public contract that would result in the city acquiring health care services for the benefit of its residents.
- Because it was determined that the council member could not participate, it was unnecessary to examine either the associate's position on the foundation's board or the foundation's connection with the law firm as a client on unrelated matters.

Additional Questions and Brief Answers

1. Can the mayor participate in decisions regarding the closing of Lakewood Hospital if his wife resigns from the foundation's board?

As explained below, the mayor can participate in the decisions because the resignation of his wife from the foundation's board would, immediately upon her resignation, negate any possibility of a family member having a fiduciary interest in a public contract.

2. Can the council member participate in decisions regarding the closing of Lakewood Hospital if: (a) his law partner resigns from the LHA's board; and (b) the associate attorney in his law firm resigns from the foundation's board?

As explained below, the council member can participate in the decisions because the resignation of his law partner and the associate attorney from their respective boards would, immediately upon their resignations, negate any possibility of either of his business associates having a fiduciary interest in a public contract.

3. Can the council member participate in decisions regarding the closing of Lakewood Hospital if his law firm represents the foundation on general matters but is not advising it regarding its future if Lakewood Hospital is closed or any other matter that may go before city council regarding the closing of Lakewood Hospital?

Because, as explained above, a provision of the public contract law would no longer prohibit the council member from participating in the matter, the foundation's connection with the law firm as a client becomes relevant.

As explained below, under the facts that have been presented, the council member is not prohibited from participating in decisions that may affect the foundation's interests.

Resignation to Avoid a Conflict

In Advisory Opinion No. 92-004, the Ethics Commission explained that a public official who has a fiduciary interest in a public contract because of his or her service on the board of a nonprofit can avoid a conflict under the Ethics Law by resigning from the nonprofit's board. In such a situation, the official can continue to serve in his or her public position and participate in matters before his or her public agency that affect the interests of the nonprofit with which he or she formerly served. The Commission explained that the Ethics Law's post-employment prohibitions restrict public officials after they leave public office, but they do not impose a period of time after the official has ceased to have an interest in a nonprofit's contracts. However, there must be no understanding that the relationship will be resumed in the future.¹

In the situation that you have described, the mayor and the council member do not have a personal interest in a public contract, but they cannot participate in decisions regarding the closing of Lakewood Hospital because of the fiduciary interests of a family member and business associates. However, as explained in Advisory Opinion No. 92-004, a conflict under the Ethics Law can be avoided by a person resigning from a fiduciary position.

Therefore, the mayor can participate in the decisions regarding the closing of Lakewood Hospital because the resignation of his wife from the foundation's board would, immediately upon her resignation, negate any possibility of a family member having a fiduciary interest in a public contract. In addition, the council member can participate in the decisions because the resignation of his law partner and the associate attorney from their respective boards would, immediately upon their resignations, negate any possibility of either of his business associates having a fiduciary interest in a public contract.

The Foundation's Connection with the Law Firm as a Client

Because of the resignation of the council member's business associates, a provision of the public contract law would no longer prohibit him from participating in the decisions regarding

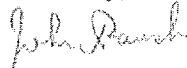
the closing of Lakewood Hospital and the foundation's connection with the law firm as a client would need to be addressed.

In Advisory Opinion No. 90-008, the Ethics Commission explained that a city council member who was an attorney was prohibited from participating in a matter pending before council if his law firm was representing a client on that particular matter or where his law firm was paid to provide legal advice on that matter. The Commission explained that the council member was not prohibited from participating in a matter pending before council that affects a client provided that his law firm is not representing the client before council and has not provided legal services on the matter before council.²

You stated that the law firm is not advising the foundation regarding its future if Lakewood Hospital is closed or any other matter that may go before city council regarding the closing of Lakewood Hospital and the opening of a family health care clinic. Applying the conclusions in Advisory Opinion No. 90-008 to your situation, the council member is not prohibited from participating in the decisions regarding the closing of Lakewood Hospital even if such decisions may affect the foundation's interests.³

This staff advisory opinion represents the views of the undersigned, based on the facts presented and the precedent of the Commission. 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 other questions or need additional information, please contact this office again.

Sincerely,



John Rawski
Staff Advisory Attorney

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

¹ See also Ohio Ethics Commission Advisory Opinion No. 90-011 (R.C. 102.03(D) does not generally prohibit a public official from participating in a matter presented to his agency by a former client of his law firm or law partner).

² See also Adv. Op. No. 89-016.

³ See R.C. 102.08(B) (when the Ohio Ethics Commission renders an advisory opinion relating to a special set of circumstances, a person who is similarly situated may reasonably rely upon the opinion and shall be immune from criminal prosecutions, civil suits, or actions for removal from office or employment for a violation of the Ethics Laws if the opinion states there is no violation of the Ethics Laws).