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INFORMATION SHEET: ADVISORY OPINION NO. 2012-01
OUTSIDE EMPLOYMENT—OHIO CASINO CONTROL COMMISSION

What is the question in the opinion?

If a lawyer is a member of the Ohio Casino Control Commission, can his or her law partnership provide any services to a casino facility or to any person, organization, or company engaged in the casino industry?

What is the answer in the opinion?

No. A member of the Casino Control Commission cannot have a direct or indirect interest in a contractual or service relationship with: (1) a casino facility; (2) casino operator; (3) management company; (4) holding company; or (5) gaming-related vendor. A partner in a private law firm would have a direct or indirect interest in the contract and services provided by the law firm.

To whom do these restrictions apply?

The restrictions in the Ethics Law that are discussed in the opinion apply to all members and employees of the Casino Control Commission.

What prompted this opinion?

The opinion was written by the Ethics Commission, from a previously issued informal advisory opinion, to provide guidance for all current and future members of the Casino Control Commission.

When did the conclusions in the opinion become effective?

The opinion became effective on February 6, 2012, after it was approved by the Commission.

For More Information, Please Contact:

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ADVISORY OPINION NO. 2012-01 IS ATTACHED.**

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Advisory Opinion
Number 2012-01
February 6, 2012

**CASINO CONTROL COMMISSION
MEMBER AND PARTNER IN LAW
FIRM**

Syllabus by the Commission:

- (1) The Ethics Law prohibits any member of the Casino Control Commission from directly or indirectly having an interest in a contractual or service relationship with the following: (1) a casino facility; (2) casino operator; (3) management company; (4) holding company; or (5) gaming-related vendor.¹
- (2) A Casino Control Commission member, who is also a partner in a private law firm, would have both a direct interest and an indirect interest in the contracts and services provided by the law firm. For that reason, the firm cannot provide legal services to: (1) a casino facility; (2) casino operator; (3) management company; (4) holding company; or (5) gaming-related vendor.

* * *

The Commission has been asked if an Ohio Casino Control Commission member's law firm can provide services to any person, organization, or company that is engaged in the casino industry in Ohio.

The statute that is applicable to this situation is the conflict of interest law, R.C. 102.03. Ohio's conflict of interest laws protect the public by prohibiting a public employee from accepting a benefit in situations when the thing of value would make it difficult or impossible for the employee to exercise the authority of his or her position in an unbiased and impartial manner.²

Within that statute, there are general conflict of interest provisions (R.C. 102.03(D) and (E)) that apply to all public officials and employees, and specific provisions (R.C. 102.03(L) and (M)) that apply to public officials or employees with a casino gaming regulatory function. Members of the Ohio Casino Control Commission have a casino gaming regulatory function.³

Question and Brief Answer

Can a Casino Control Commission member's law firm provide services to any person, organization, or company that is engaged in the casino industry in Ohio?

No. The Ethics Law prohibits any member of the Casino Control Commission from directly or indirectly having an interest in a contractual or service relationship with the following: (1) a casino facility; (2) casino operator; (3) management company; (4) holding company; or (5) gaming-related vendor.⁴ A partner in a law firm has a direct interest and an indirect interest in the contracts and services provided by the law firm. For that reason, the firm cannot provide legal services to any of these parties.

Law Firm Providing Services on Casino Matters

Of the conflict of interest restrictions that apply to members of the Casino Control Commission, R.C. 102.03(L) contains the broadest prohibition. R.C. 102.03(L) provides:

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.

When interpreting this statute, the Commission is bound by the definitions of “casino operator,” “management company,” “holding company,” “casino facility,” and “gaming-related vendor” that are included within the amendment to the Ohio Constitution approved by voters or the statutes governing the Casino Control Commission enacted by the General Assembly.

Any person who is employed by, or serves as a board member of, the Casino Control Commission is prohibited from, directly or indirectly:

- Having a financial interest in;
- Having an ownership interest in;
- Being a creditor of;
- Holding a debt instrument issued by;
- Having an interest in a contractual relationship with; or
- Having an interest in a service relationship with:

Any:

- Casino facility in Ohio⁵;
- Casino operator of a casino facility in Ohio⁶;
- Management company working with a casino facility in Ohio⁷;
- Gaming-related vendor working with a casino operator or management company for a casino facility in Ohio⁸; or
- Holding company of an applicant, casino operator, management company, or gaming-related vendor of a casino facility in Ohio.⁹

For purposes of this opinion, the central issue is the prohibition against having an interest in a contractual or service relationship with the identified casino businesses.

R.C. 102.03(L) prohibits any direct or indirect “interest in a contractual or service relationship.” There is no limitation on the nature of the interest prohibited by this phrase. The provision of legal services is a “contractual or service relationship” comprehended within the phrase. The Commission has previously concluded that the term “interest,” used in R.C. 2921.42, includes both financial and fiduciary interests.¹⁰ An “interest” prohibited by R.C. 102.03(L) can also be financial or fiduciary.

Application to the Question

As a partner in a law firm, a Casino Control Commission member would have a direct financial interest in the contracts of and services provided by the law firm. Even if the Casino Control Commission member were to waive a share of any partnership profits attributable to a particular contract of or service provided by the law firm, he or she would have an indirect interest in that contract or service. Client fees are gross income to the law firm. The firm then uses that income to pay for rent, all other overhead, and staff salaries. Some law firms also pay for other benefits for their partners and associates, including professional association membership fees, club memberships, and parking. These benefits and the partner’s fiduciary connection to the firm demonstrate an indirect interest in the contracts of the firm.¹¹

If a Casino Control Commission member’s firm provides counsel or services to a casino facility, casino operator, management company, gaming-related vendor, or holding company, the Casino Control Commission member would have a prohibited direct or indirect interest in the law firm’s contractual or service relationship with that entity. For that reason, a law firm with which a Casino Control Commission member is a partner is prohibited from providing services directly to these parties. The law firm is also prohibited from providing services to another attorney, if the services are for any client of the other attorney who is one of these parties.

The restriction in R.C. 102.03(L) would not apply, however, if the Casino Control Commission member’s firm provides services to a party other than those under the jurisdiction of the Casino Control Commission. Therefore, R.C. 102.03(L) does not prohibit a Casino Control Commission member’s firm from providing legal services on issues that arise in one of the Ohio casinos to a party that is not under the jurisdiction of the Casino Control Commission. However, in that situation, R.C. 102.03(M)(1) and the general conflict of interest provisions in R.C. 102.03(D) and (E) would apply to the Casino Control Commission member. These restrictions may still prohibit the activity.

Things of Value from Anyone Subject to Jurisdiction of the Commission—R.C. 102.03(M)(1)

R.C. 102.03(M)(1) states that a Casino Control Commission member shall not:

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.

Payment for legal services is within the definition of anything of value.¹² R.C. 102.03(M)(1) is a complete bar on the members of the Ohio Casino Control Commission, prohibiting them from accepting anything of value, regardless of its amount or the purpose for which it is given, from the prohibited sources discussed in that section.

The range of prohibited sources in R.C. 102.03(M)(1) is broader than those described in R.C. 102.03(L) because it includes any “person subject to the jurisdiction of the” Casino Control Commission and any “officer, attorney, agent, or employee” of any “other person subject to the jurisdiction of the commission.” Therefore, if any person subject to the Commission’s jurisdiction were to pay a Casino Control Commission member’s law firm to provide legal services, the Casino Control Commission member would be prohibited from accepting any portion of the fees paid by that party to the law firm.

This prohibition applies regardless of the subject matter of the services provided by the firm. Even if the firm provides legal services that are unrelated to a casino subject that is before the Casino Control Commission, R.C. 102.03(M)(1) would prohibit the Casino Control Commission member from accepting any portion of the fees paid to the firm by:

- A casino operator;
- A management company;
- Any other person subject to the jurisdiction of the Commission;
- An officer of a casino operator, management company, or any other person subject to the jurisdiction of the Commission;
- An attorney of a casino operator, management company, or any other person subject to the jurisdiction of the Commission;
- An agent of a casino operator, management company, or any other person subject to the jurisdiction of the Commission; or
- An employee of a casino operator, management company, or any other person subject to the jurisdiction of the Commission.

For example, R.C. 102.03(M)(1) prohibits a member of the Casino Control Commission, who is also a partner in a law firm, from accepting “anything of value,” including a share of client fees paid to the law firm, from:

- An attorney for a casino operator who asks the firm to provide services in connection with a case, even if the case does not involve the casino operator;
- An employee of a casino operator who engages a lawyer in the law firm to represent him in a civil rights claim against his supervisor at the casino; or

- An employee of a casino operator who engages a lawyer in the firm to represent her in a divorce action.

It should be noted that, unlike R.C. 102.03(L), this prohibition does not limit “indirect” benefits. For that reason, a member of the Casino Control Commission will not be in violation of R.C. 102.03(M)(1) because he or she receives the indirect benefits described earlier from legal fees paid by a client of the firm who is one of these prohibited sources of things of value.

If a Casino Control Commission member were to violate R.C. 102.03(M)(1), in addition to the penalties set forth in R.C. 102.99, he or she would forfeit the position as a member of the Commission.¹³

Other Considerations

In addition to R.C. 102.03(L) and (M)(1), a Casino Control Commission member is also within the class of individuals¹⁴ subject to R.C. 102.03(D) and (E), which are the general conflict of interest restrictions contained in the law before R.C. 102.03(L) and (M)(1) were enacted.¹⁵

A Casino Control Commission member is also subject to the Revolving Door restrictions in R.C. 102.03(A)(8). During and for two years after leaving the Casino Control Commission, a member is prohibited from: (1) representing a client before any public agency on any matter before or concerning the Casino Control Commission;¹⁶ (2) being employed or compensated by a person regulated by the Casino Control Commission on any matter before or concerning the Casino Control Commission; and (3) acting in a representative capacity for any person on any matter before or concerning the Casino Control Commission.

A Casino Control Commission member is also prohibited from disclosing or using, without appropriate authorization, any confidential information that the member acquires in the course of his or her official duties. There is no time limitation on this prohibition.¹⁷

Finally, a Casino Control Commission member, who is also a lawyer, is subject to the Rules of Professional Conduct, which includes rules that apply to lawyers who are or have been public officials and public employees. For example, Rule No. 1.11 sets forth special conflict of interest rules for lawyers who serve in public roles.¹⁸ These rules may restrict the Casino Control Commission member actions, or the actions of his or her firm, more broadly than the Ethics Law. For guidance on the application of the Rules of Professional Conduct, a Casino Control Commission member who is also an attorney should contact the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio.

Conclusion

This advisory opinion 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 the Commission advises that: The Ethics Law prohibits any member of the Casino Control Commission from directly or indirectly having an interest in a contractual or service relationship with the following: (1) a casino facility; (2) casino operator; (3) management company; (4) holding company; or (5) gaming-related vendor.¹⁹ A Casino Control Commission member, who is also a partner in private law firm, would have both a direct interest and an indirect interest in the contracts and services provided by the law firm. For that reason, the firm cannot provide legal services to: (1) a casino facility; (2) casino operator; (3) management company; (4) holding company; or (5) gaming-related vendor.



Merom Brachman, Chair
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 These terms are defined in R.C. 3772.01.

² The application of R.C. 102.03(D) and (E) is dependent upon the facts and circumstances of each individual situation. Ohio Ethics Commission Advisory Opinions No. 87-008, 89-003, and 89-006.

³ R.C. 102.01(B) and (C). The term "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 or who is an employee of the general assembly, any court, any department, division institution, board, commission, authority, bureau, or other instrumentality of the state.

⁴ These terms are defined in R.C. 3772.01.

⁵ Ohio Const. Art. XV, Sec. 6(C)(9). The Constitution allows for four casino facilities to be operated in Ohio. Ohio Const. Art. XV, Sec. 6(C)(1).

⁶ Defined in R.C. 3772.01(F).

⁷ Defined in R.C. 3772.01(Q).

⁸ Defined in R.C. 3772.01(J).

⁹ Defined in R.C. 3772.01(K).

¹⁰ Adv. Op. No. 2009-06.

¹¹ The Commission has explained that, if a partner in a law firm waives his or her share of partnership profits attributable to services performed under a public contract, he or she does not have a direct interest in the contract. Adv. Op. No. 90-007.

¹² Adv. Op. No. 90-008.

¹³ R.C. 102.03(M)(1) is a misdemeanor of the first degree, with a maximum penalty of six months in prison and a \$1000 fine. The additional forfeiture penalty is set forth in R.C. 102.03(M)(3).

¹⁴ R.C. 102.01(B) and (C).

¹⁵ Adv. Ops. No. 89-016, 90-008, and 96-004.

¹⁶ See also R.C. 102.04(A), prohibits a member of a state board from receiving compensation for services he or she seeks to perform personally on matters *before the board he or she serves*. (An exception in R.C. 102.04(D) allows a board member to be paid to perform services personally on a matter *before an agency other than the board he or she serves*, as long as all of the requirements of the exception can be met. However, as a Casino Control Commission member, the added restrictions in R.C. 102.03(A)(8), (M), and (L) will also apply.) R.C. 102.04(A) is explained more fully in Adv. Op. No. 2007-03.

¹⁷ Adv. Op. No. 88-009.

¹⁸ Other potentially applicable Rules include Rules No. 1.6, 1.7, 1.8, and 1.12.

¹⁹ These terms are defined in R.C. 3772.01.