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March 20, 2014

Brandon King  
King Management Group, Ltd.  
13308 Euclid Avenue, Suite 105  
East Cleveland, Ohio 44112

Dear Mr. King:

The Ohio Ethics Commission received your request for an advisory opinion on March 7, 2014. Your letter asked a question regarding the public contract prohibition of the Ethics Law.

**Key Facts**

In a telephone conversation and your letter, you stated that:

- You took office as a member of the East Cleveland (city) City Council on January 2, 2014.
- You are the managing partner of King Management Group, Ltd., (KMG) and co-owner of an office building in the city located at 13308 Euclid Avenue (building).
- The city was leasing office space in the building for two of its departments when you acquired an ownership interest in the building in 2000.
- Within a year after your acquiring an ownership interest in the building, the leases with the city were examined, negotiated, and signed with KMG.
- Most of the terms and conditions of the existing lease were set by the city and the previous owner, including the rents that have not changed over the years.
- Leases are signed by the city department heads, the mayor, and the finance director.
- You have provided a copy of your request letter and disclosed your interest in KMG to the city law director and other city officials.

Question and Brief Answer

You have asked if the Ethics Law prohibits you from continuing to lease office space to the city.

As explained below, you are prohibited from having an interest in a contract with the city unless you can meet an exception. Even if you can meet the exception, you are prohibited from participating as a council member in any matter that affects the city's lease of office space from KMG. Further, you are prohibited from using your influence, formally or informally, with other city officials and employees to secure a benefit for KMG.

Having an Interest in a Public Contract—R.C. 2921.42(A)(4)

As a city council member,<sup>1</sup> you are subject to R.C. 2921.42(A)(4), which provides that no public official shall knowingly:

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 the public official is connected.

A "public contract" includes the purchase or acquisition, or a contract for the purchase or acquisition, of services by or for the use of a public agency.<sup>2</sup> The city's lease with KMG is a public contract.

An interest which is prohibited by R.C. 2921.42 must be definite and direct, and may be financial or fiduciary.<sup>3</sup> As the managing partner of KMG and co-owner of the building, you have an interest in the city's lease with KMG. This interest in a public contract is prohibited by R.C. 2921.42(A)(4) unless you can meet each of the requirements of R.C. 2921.42(C), as described below.

Exception—R.C. 2921.42(C)

The exception to the R.C. 2921.42(A)(4) prohibition is comprised of four requirements. The application of each of the four requirements depends on the facts and circumstances of each situation.<sup>4</sup> The burden is on the official to objectively show that he is in compliance with the exception.<sup>5</sup> Based on the information you have provided, it appears that you can meet the exception for the current lease.

**Requirement 1:** The subject of the public contract is necessary supplies or services for the political subdivision or governmental agency or instrumentality involved.

In order to meet the first requirement, you must show that it is necessary for the city to lease the building.<sup>6</sup> This requirement can be demonstrated because the appropriate city officials have decided, since before the year 2000, that it needed the office space.

**Requirement 2:** The supplies or services are unobtainable elsewhere for the same or lower cost, or are being furnished to the political subdivision or governmental agency or instrumentality as part of "a continuing course of dealing" established prior to the public official's becoming associated with the political subdivision or governmental agency or instrumentality involved.<sup>7</sup>

Because KMG has had a contract with the city almost 13 years prior to your taking office as a city council member, the "continuing course of dealing" exception would apply and you would not have to show that the office space is "unobtainable elsewhere for the same or lower cost."<sup>8</sup>

You stated that most of the terms and conditions of the existing lease were set by the city and the previous owner, including the amount of rents that have not changed over the years. If changes in terms and conditions of the current lease are made while you serve as a council member, you must be able to objectively show that the building is either the least costly property for the city to lease for office space or is uniquely suited to meet its requirements because of its location, size, or other characteristics.<sup>9</sup>

However, the city must make every reasonable effort to open the selection process to all interested and qualified parties and not have drawn specifications and requirements to favor your building.<sup>10</sup>

**Requirement 3:** The treatment accorded the political subdivision or governmental agency or instrumentality is either preferential to or the same as that accorded other customers or clients in similar transactions.

You can meet this requirement if the services that KMG provides are the same as or better than the services it provides to any other client.

**Requirement 4:** The entire transaction is conducted at arm's length, with full knowledge by the political subdivision or governmental agency or instrumentality involved, of the interest of the public official and the public official takes no part in the deliberations or decision of the political subdivision or governmental agency or instrumentality with respect to the contract.

Provided that the city has full knowledge of your interest in its contract with KMG, you can meet this requirement.<sup>11</sup> Because KMG has had a contract with the city for almost 13 years prior to your taking office as a city council member, it is apparent that you did not take part in any deliberations or decisions as a public official to award the contract.

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#### Other Ethics Law Requirements

Even if you can meet each of the four requirements of R.C. 2921.42(C), you must comply with other provisions of the Ethics Law. R.C. 2921.42(A)(1) and R.C. 102.03(D) prohibit a public official from participating in the award of public contracts, issues arising under public contracts, or other matters that would provide a definite and direct financial benefit to himself.<sup>12</sup>

Therefore, R.C. 2921.42(A)(1) and R.C. 102.03(D) and (E) would prohibit you from participating as a council member in any matter that affects the city's lease of office space from KMG. Further, you are prohibited from using your influence, formally or informally, to secure a benefit for KMG. For example, you are prohibited from using your unique connection with other city officials and employees in any manner that would provide an economic advantage, including securing access to information on competitors such as competing bids or quotes. If a dispute were to arise between KMG and the city about the current lease, services provided under the lease, or payments, you would be prohibited from using your position to resolve the dispute.

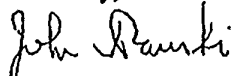
In addition, R.C. 102.04(C) will prohibit you from being compensated for personally representing the interests of KMG before council or any other city agency.<sup>13</sup> Further, R.C. 102.03(B) will prohibit you from disclosing or using any confidential information you acquire as a council member.<sup>14</sup>

#### Issues Outside of the Ethics Law

Laws, rules, and policies, outside of the Ethics Law may also condition your conduct as a council member. You stated in a telephone conversation that you had discussed your interest in KMG with the city law director regarding possible issues arising under city charter provisions. The Ethics Commission does not have the authority to interpret city charter provisions, ordinances, or rules.<sup>15</sup> The law director is the appropriate authority for any further questions you may have on issues outside the Ethics Law.

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 questions or need additional information, please do not hesitate to contact me again.

Sincerely,



John Rawski

Staff Advisory Attorney

Enclosure: Selling Goods or Services to Local Agency: Information Sheet No. 2

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

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<sup>1</sup> R.C. 2921.01(A); Ohio Ethics Commission Advisory Opinion No. 89-008.

<sup>2</sup> R.C. 2921.42(Q)(1)(a).

<sup>3</sup> Adv. Ops. No. 81-003 and 81-008.

<sup>4</sup> Adv. Ops. No. 80-003 and 82-007.

<sup>5</sup> Adv. Op. No. 84-011.

<sup>6</sup> R.C. 2921.42(C)(1).

<sup>7</sup> R.C. 2921.42(C)(2).

<sup>8</sup> Adv. Op. No. 92-008.

<sup>9</sup> Adv. Op. No. 88-003.

<sup>10</sup> Adv. Ops. No. 83-004 and 89-004.

<sup>11</sup> R.C. 2921.42(C)(4).

<sup>12</sup> Adv. Op. No. 83-002.

<sup>13</sup> There is an exception to this prohibition, set forth in R.C. 102.04(D), but the exception does not apply to an elected official.

<sup>14</sup> Adv. Op. No. 88-009.

<sup>15</sup> R.C. 102.08.