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Paul M. Nick  
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December 15, 2016

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

Dear Mr. King:

On December 13, 2016, the Ethics Commission received your request for an advisory opinion. This opinion is based on the information that you provided in your letter and in a subsequent email.

For purposes of this opinion, the Commission staff assumes:

- You are currently a Council Member for the City of East Cleveland (city). You may soon become the Mayor of East Cleveland.
- Your older brother is the president and owner of a family business called American Merchandising Services (AMS). AMS sells industrial chemicals; fuels, oils and lubricants; office supply products, janitorial products, laboratory chemical supplies, and other miscellaneous items.<sup>1</sup>
- AMS sells products to the City of East Cleveland. Currently, there is no formal contract between the city and AMS but the city does make "spot-purchases" from AMS. These purchases are typically less than \$2,000.
- You work for AMS in sales and marketing. The city was one of your clients before you were elected to city council. The city account has been turned over to your brother. You still process some of the city's purchases, which includes placing orders with AMS manufacturers/distributors for the requested materials. You do not deliver the orders or invoice the city for the purchases.
- You stated that, as the Mayor of East Cleveland, you will be required to "sign-off" on business transactions between AMS and East Cleveland.

#### Question

Can AMS and the city continue to do business together after you become mayor?

**Brief Answer**

You are prohibited from authorizing any contracts between AMS and the city. If, as the mayor, you would be required to authorize the city's purchases from AMS, AMS would effectively be prohibited from selling goods or services to city.

**Purpose of an Advisory Opinion**

The purpose of Ethics Commission advisory opinions is to provide guidance to public officials or employees upon which they can rely before engaging in actions that may be prohibited by the Ethics Law.<sup>2</sup> For that reason, the Commission can render an advisory opinion only in response to a question that involves the prospective conduct of the person who requests the opinion.<sup>3</sup> This opinion does not reach any conclusions about actions that may have been taken in the past.

**Authorizing Public Contracts—R.C. 2921.42(A)(1)**

A city mayor is subject to R.C. 2921.42(A)(1),<sup>4</sup> which provides that no public official shall knowingly:

Authorize, or employ the authority or influence of the public official's office to secure authorization of any public contract in which the public official, a member of the public official's family, or any of the public official's business associates has an interest.

The term "public contract" includes any purchase of goods or services by or for the use of a political subdivision.<sup>5</sup> Competitively bid, formal written contracts, and casual, as-needed purchases are all public contracts.<sup>6</sup> The city's purchase of goods or services from AMS is a public contract.

R.C. 2921.42(A)(1) prohibits a city mayor from authorizing, or employing the authority or influence of his office to secure authorization of any public contract in which he, a member of his family,<sup>7</sup> or any of his business associates<sup>8</sup> has an interest.<sup>9</sup> In this situation, both your private employer (your business associate) and your brother (a member of your family) have an interest in the city's purchases from AMS.<sup>10</sup>

Therefore, you are prohibited from authorizing any purchases from AMS, your brother's company, which is also your employer. You stated that, as the mayor, you "will have to sign-off on business dealings regarding" the city and AMS. You also stated that most of the "spot-purchases" the city makes from AMS are less than \$2,000. Section 72 of the Charter of the City of East Cleveland states:

The Mayor may make any contract or purchase supplies or material, or provide labor for any work in any department, not involving more than Two Thousand Five Hundred Dollars or the amount stipulated by State law, whichever amount is the greater.

You should consult with the city's legal counsel to determine whether the city mayor is required to authorize the purchase of goods or services by the city. If the mayor is required to authorize the city's purchases from AMS, the company can not sell goods or services to the city if you become mayor without a violation of R.C. 2921.42(A)(1).

Even if the mayor is not required to sign or otherwise authorize the city's purchases from AMS, you are prohibited from using your public position in any other way to secure authorization of the purchases. R.C. 2921.42(A)(1) prohibits you from discussing the purchases, recommending AMS's goods or services to other city officials or employees, using your position of authority over subordinate city personnel to secure contracts for AMS, or taking any other formal or informal actions on the purchases.<sup>11</sup>

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

You must also comply with 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.

An interest that is prohibited under R.C. 2921.42 must be definite and direct, and may be financial or fiduciary in nature.<sup>12</sup> An ordinary employee of a company does not have a definite and direct interest in the company's contracts or sales, unless the employee:

- (a) Has an ownership interest in the company;
- (b) Is a director, trustee, or officer of the company;
- (c) Takes part in contract negotiations for the company;
- (d) Is paid a salary that is based on the proceeds of the contract;
- (e) Receives a share of the contract's proceeds in a commission or fee;
- (f) Has employment responsibilities that include participation in or oversight of the administration or execution of the contract;
- (g) Is employed by an employer that receives all or most of its funding from a contract and is dependent on the receipt of the contract; or
- (h) Is employed in a position that is dependent on the contract.<sup>13</sup>

You stated that, as an AMS employee, you process some of the city's "spot-purchases" from AMS.<sup>14</sup> You have a prohibited interest in any purchases the city makes from AMS if, as an employee of the company, you perform duties related to those purchases unless you can objectively demonstrate that you can meet all four of the requirements of the exception to R.C. 2921.42(A)(4).

**Exception to the Prohibition of R.C. 2921.42(A)(4)—R.C. 2921.42(C)**

R.C. 2921.42(C) provides an exception to the prohibitions set forth in R.C. 2921.42(A)(4). The burden is on you to show that you meet all four parts of the exception.<sup>15</sup>

**Requirement 1:** The subject of the public contract is necessary supplies or services for the political subdivision or governmental agency or instrumentality involved.<sup>16</sup>

In order to meet the first requirement, you must show that the goods or services AMS sells to the city are necessary. This requirement can be met if the appropriate public officials in the city have decided that the goods and services are necessary. You are prohibited from taking part in this decision.

**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>17</sup>

In order to meet this requirement, you must show that the goods or services that AMS sells to the city are provided pursuant to a "continuing course of dealing" that began prior to your service with the city or the products or services the company provides are "unobtainable elsewhere for the same or lower cost."

In Advisory Opinion No. 82-007, the Commission stated that the exception "for services being furnished as part of a 'continuing course of dealing' applies only to services provided during the term of the existing contract." The contract must be a written contract, established prior to the time the official was appointed to his public position.<sup>18</sup> If, however, the existing contract is renewed, modified, extended, or otherwise changed after the public official is elected, he cannot meet the requirement.

You indicated that currently, there is no written contract between AMS and the city but that the city makes "spot-purchases" from AMS. Where as-needed purchases are made by a public agency, each purchase is a new and separate public contract so there is no continuing course of dealing. Therefore, you would need to show that AMS offers goods or services to the city for the lowest price as determined by some fair and impartial process in which the city uses an objective price comparison and provides adequate notice to other suppliers of the same services.<sup>19</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.<sup>20</sup>

You can meet this requirement if the goods and services that AMS sells to the city are the same as or better than the goods or services it provides to any other customer.

**Requirement 4:** The entire transaction is conducted at arm's length,<sup>21</sup> 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.<sup>22</sup>

In order to meet this exception, the city must have full knowledge of your interest in the city's purchases from AMS, and you cannot take part, as a city official, in any deliberations, decisions, votes, or discussions regarding the purchases from the company. This requirement is consistent with the prohibitions in R.C. 2921.42(A)(1) and R.C. 102.03(D) and (E), which prohibit you from participating, in your public position, in any way, in the city's business dealings with AMS. If, as the mayor, you are required to authorize the city's purchases from AMS, you cannot meet this requirement. If you are unable to meet the exception in R.C. 2921.42(C), then R.C. 2921.42(A)(4) would prohibit AMS from selling goods or services to the city.

#### **R.C. 2921.42(A)(3)—Position of Profit in a Public Contract**

You are also subject to R.C. 2921.42(A)(3), which states that no public official shall knowingly:

During the public official's term of office or within one year thereafter, occupy any position of profit in the prosecution of a public contract authorized by the public official or by a legislative body, commission, or board of which the public official was a member at the time of authorization, unless the contract was let by competitive bidding to the lowest and best bidder.

R.C. 2921.42(A)(3) prohibits a public official from occupying a position of profit in any unbid contract authorized by the official or by a public board of which he is a member.<sup>23</sup> A public official occupies a position of profit in a public contract when he will realize a financial advantage, gain, or benefit, which is a definite and direct result of the public contract.<sup>24</sup>

A public official or board "authorizes" a public contract if the contract could not have been awarded without the approval of the official, the position that he holds, or the board on which he serves.<sup>25</sup> Even if the official does not have *final* approval authority over his public agency's contracts, the official will be considered to have participated in the authorization of a public contract if his involvement was necessary for the contract to be finalized.<sup>26</sup>

R.C. 2921.42(A)(3) prohibits you from profiting from any city purchase from AMS that you authorize, unless the sale results from a competitive bid.<sup>27</sup> You stated that you do not receive any commission or fee from sales that AMS makes to the city.

**Contract Void and Unenforceable—R.C. 2921.42(H)**

The criminal provisions in the Ethics Law apply to public officials and employees rather than to the political subdivision they serve. However, R.C. 2921.42(H) provides: "Any public contract in which a public official, a member of the public official's family, or any of the public official's business associates has an interest in violation of this section is void and unenforceable."

Therefore, while a city would not be subject to criminal prosecution for a violation of R.C. 2921.42 by a city official, the violation would negatively impact the city because the contract would be void and unenforceable.

**Other Considerations**

Other Ethics Law provisions prohibit you from engaging in certain activities that could affect AMS's business dealings with the city:

- R.C. 102.03(D) and (E), in addition to R.C. 2921.42(A)(1), prohibit you from participating, as a public official, in any matter that affects the city's acquisition of goods or services from AMS.<sup>28</sup> Further, R.C. 102.03(D) and (E) prohibit you from using your influence, formally or informally, with other public officers or employees to get business for the company. You are prohibited from using your unique connection with the city in any manner that would provide an economic advantage for AMS, including securing access to information on competitors and competing prices and quotes.
- R.C. 102.04(C) prohibits you from being compensated by AMS to represent it on matters that are before the city.<sup>29</sup> For example, you could not contact any city official or employee on behalf of the company.
- R.C. 102.03(B) prohibits you from disclosing or using any confidential information you acquire as a public official to benefit AMS.<sup>30</sup>
- R.C. 102.03(A)(1) prohibits you from representing AMS before the city (or any state or local public agency in Ohio) on matters in which you have personally participated as a city official.<sup>31</sup>

Finally, you should consult with the city's legal counsel regarding any policies, rules, or laws, outside of the Ethics Law, that may also be applicable to the situation you have described.

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 this office again.

Sincerely,



Karen R. King  
Staff Advisory Attorney

Enclosure: Ohio Ethics Commission Advisory Opinions No. 96-004 and 2009-02

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).

<sup>1</sup> See <http://americanmerchandising.com/>.

<sup>2</sup> Ohio Ethics Commission Advisory Opinion No. 94-002.

<sup>3</sup> Adv. Ops. No. 75-037 and 94-002.

<sup>4</sup> R.C. 2921.01(A).

<sup>5</sup> R.C. 2921.42(I)(1)(a).

<sup>6</sup> Adv. Op. No. 90-005.

<sup>7</sup> The Ethics Commission has defined "family member" to include a public official's parents and step-parents; grandparents; spouse; children and step-children, whether dependent or not; grandchildren; and siblings. Adv. Op. No. 2010-03 and 2008-03. Any other individual related to an official by blood or marriage is a "member of the official's family" if he or she lives in the same household with the official. *Id.*

<sup>8</sup> The Ethics Commission has defined the term "business associates" as parties who are acting together for a common business purpose. See Adv. Ops. No. 85-004 and 86-002. For example, the Ethics Commission has stated that: (1) a private employer is the business associate of his employee; (2) a company is the business associate of its representatives or *agents*; (3) law partners are business associates; and (4) business partners are business associates. All of these are relationships of parties involved in common business endeavors. Adv. Ops. No. 78-006, 84-013, 90-007, and 85-004.

<sup>9</sup> "Authorizing" a contract includes voting on, signing, or taking any other action to award the contract. Adv. Ops. No. 2010-03 and 2001-02. Employing the "authority or influence" of one's position to "secure authorization of" a contract includes a much broader range of activities, such as recommending, deliberating or discussing, and formally or informally lobbying any public official or employee about the contract. *Id.*

<sup>10</sup> As explained more fully in discussion regarding R.C. 2921.42(A)(4), if you perform services under the city's contract with AMS, you also have an interest in the public contract.

<sup>11</sup> Adv. Ops. No. 89-008 and 92-003.

<sup>12</sup> Adv. Ops. No. 81-008 and 89-004.

<sup>13</sup> Adv. Op. No. 2009-02. See also *State v. Urbin*, (2002), 148 Ohio App. 3d 293, ¶¶ 13-16, (2003), 100 Ohio St. 3d 1207, ¶¶ 13-14 (appeal dismissed as improvidently allowed) (an employee who was a manager of a banquet center has an interest in the banquet center's contracts).

<sup>14</sup> This is also prohibited by R.C. 2921.42(A)(1), discussed above.

<sup>15</sup> Adv. Op. No. 84-011.

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<sup>16</sup> R.C. 2921.42(C)(1).

<sup>17</sup> R.C. 2921.42(C)(2).

<sup>18</sup> Adv. Op. No. 88-008.

<sup>19</sup> Adv. Op. No. 92-008. While R.C. 2921.42(C)(2) does not require "competitive bidding," it is a requirement of R.C. 2921.42(A)(3).

<sup>20</sup> R.C. 2921.42(C)(3).

<sup>21</sup> In an arm's length transaction: (1) both parties act voluntarily, without compulsion or duress; (2) the transaction occurs in an open market; and (3) both parties act in their own self-interest. *Walters v. Knox Cty. Bd. of Rev.* (1989), 47 Ohio St.3d 23, 25. An "open market" is a market in which any buyer or seller can trade, and the prices and product availability are determined by free competition. *Mildred Hine Trust v. Buster*, Franklin App. No. 07AP-277, 2007-Ohio-6999, ¶ 21. See also R.C. 2921.42(A)(1) and R.C. 102.03(D) and (B).

<sup>22</sup> R.C. 2921.42(C)(4).

<sup>23</sup> Adv. Op. No. 2000-02.

<sup>24</sup> See Adv. Ops. No. 92-013 and 92-017.

<sup>25</sup> See Adv. Ops. No. 87-004 and 92-008.

<sup>26</sup> Adv. Op. No. 88-008.

<sup>27</sup> See 2008 Ohio Atty.Gen.Op. No. 2008-023 (a public board may not dispense with competitive bidding for a particular transaction when the competitive bidding requirement is statutorily mandated). See *Danis Clarkco Landfill Co. v. Clark Cty. Solid Waste Management District* (1994), 73 Ohio St. 3d 590, 600 ("The RFP method of procurement is not competitive bidding."). See also Adv. Op. No. 92-014 and Adv. Op. No. 88-006 (distinguishing between 'competitive bidding' and a political subdivision's 'selection process' for purposes of the public contract provisions of the Ethics Law).

<sup>28</sup> Generally, a member of a public board, such as a city council, can withdraw from matters before the board that pose a conflict, because it is the board itself that is empowered to make decisions. Adv. Op. No. 92-009. By contrast, an individual office holder who does not serve on a governing board, and in whom decision-making power is vested by law, cannot withdraw from matters before his office unless there is a specific statute that enables his withdrawal. Adv. Op. No. 92-009; R.C. 109.04.

<sup>29</sup> For purposes of R.C. 102.04(C), "personally rendering services" includes, but is not limited to, representing, advising, preparing non-ministerial documents for, or consulting with, any person. The prohibition of R.C. 102.04(C) applies even if you are not personally appearing before the city on the matter. A matter is before a city when it is "being considered by, decided by, or in the presence of or under the official purview of" the city. There is an exception, in R.C. 102.04(D), but it does not apply to elected officials.

<sup>30</sup> Adv. Op. No. 88-009.

<sup>31</sup> This prohibition, also known as the "revolving door law," applies to you while you are a city official and for one year after you leave. "Represent" includes *any* formal or informal appearance before or written or oral communication with any public agency, including: drafting formal documents, filings, informal letters, notes, and e-mails, regardless of whether you sign the communication.



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December 15, 2016

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

Dear Mr. King:

On December 13, 2016, the Ethics Commission received your request for an advisory opinion. You asked if the answer that was provided to you in a previously issued advisory opinion would change if you left office as a city council member and became the mayor.

#### **Previously Issued Advisory Opinion**

On March 20, 2014, the Ethics Commission issued you a staff advisory opinion which addressed your ability to continue to lease office space to the City of East Cleveland (city) in light of your serving the city as a council member. You explained that 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). That opinion explained that you are prohibited from having an interest in a contract with the city unless you can meet an exception and that you could not participate as a council member in any matter that affects the city's lease of office space from KMG or use your influence, formally or informally, with other city officials and employees to secure a benefit for KMG. The facts and conclusions in that opinion are included as if restated here, but this opinion will discuss the portions that are relevant to your changed facts and circumstances. I have enclosed a copy of that opinion for your reference.

#### **Previously Stated Facts**

- 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.

#### **Changed Facts and Circumstances**

- You are currently a city council member, but you may soon become the mayor.

#### **Question and Brief Answer**

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

You are prohibited from authorizing any city contracts with KMG. As set forth above, under the facts that you provided for the previously issued advisory opinion, "leases are signed by the city department heads, **the mayor**, and the finance director." (Emphasis added). If the mayor is legally required to authorize the lease of property by the city, then KMG would effectively be prohibited from leasing office space to the city, because as mayor, you would be required to authorize the city's contract with KMG.

#### **Authorizing Public Contracts—R.C. 2921.42(A)(1)**

A city mayor is subject to R.C. 2921.42(A)(1),<sup>1</sup> which provides that no public official shall knowingly:

Authorize, or employ the authority or influence of the public official's office to secure authorization of any public contract in which the public official, a member of the public official's family, or any of the public official's business associates has an interest.

The term "public contract" includes any purchase of goods or services by or for the use of a political subdivision.<sup>2</sup> Competitively bid, formal written contracts, and casual, as-needed purchases are all public contracts.<sup>3</sup> The city's lease of office space from 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>4</sup> As the managing partner of KMG and co-owner of the building, you have an interest in the city's lease with KMG.

R.C. 2921.42(A)(1) prohibits you, as the city's mayor from authorizing, or employing the authority or influence of your office to secure authorization of any public contract in which you have an interest. As set forth above, under the facts that you provided for the previously issued advisory opinion, "leases are signed by the city department heads, **the mayor**, and the finance director." (Emphasis added).

Specifically, Section 72 of the Charter of the City of East Cleveland states: . . .

The Mayor may make any contract or purchase supplies or material, or provide labor for any work in any department, not involving more than Two Thousand Five Hundred Dollars or the amount stipulated by State law, whichever amount is the greater.

You should consult with the city's legal counsel to determine whether the city mayor is legally **required** to authorize the lease of property by the city. If it is determined that the mayor is legally required to authorize the city's lease of property, then KMG would effectively be prohibited from leasing office space to the city, because as mayor, you would be required to authorize the city's contract in which you have a definite and direct financial and fiduciary interest.

Even if the mayor is not required to authorize the city's lease of property from KMG, you are prohibited from using your position as mayor in any other way to secure authorization of the lease. R.C. 2921.42(A)(1) prohibits you from discussing the lease, recommending KMG to other city officials or employees, using your position of authority over subordinate city personnel to secure contracts for KMG, or taking any other formal or informal actions on the lease.<sup>5</sup>

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

If it is determined that the mayor is not legally required to authorize the city's lease of property from KMG, then R.C. 2921.42(A)(4) will prohibit you from having an interest in a contract with the city unless you can meet an exception. The prohibition and the exception were explained in the March 2014 advisory opinion. You should refer to that opinion, because the answer that was provided to you pertaining to R.C. 2921.422(A)(4) and the exception will not change if you leave office as a city council member and became the mayor.

**R.C. 2921.42(A)(3)—Position of Profit in a Public Contract**

You are also subject to R.C. 2921.42(A)(3), which states that no public official shall knowingly:

During the public official's term of office or within one year thereafter, occupy any position of profit in the prosecution of a public contract authorized by the public official or by a legislative body, commission, or board of which the public official was a member at the time of authorization, unless the contract was let by competitive bidding to the lowest and best bidder.

R.C. 2921.42(A)(3) prohibits a public official from occupying a position of profit in any unbid contract authorized by the official or by a public board of which he is a member.<sup>6</sup> A public official occupies a position of profit in a public contract when he will realize a financial advantage, gain, or benefit, which is a definite and direct result of the public contract.<sup>7</sup>

A public official or board "authorizes" a public contract if the contract could not have been awarded without the approval of the official, the position that he holds, or the board on which he serves.<sup>8</sup> Even if the official does not have final approval authority over his public agency's contracts, the official will be considered to have participated in the authorization of a public contract if his involvement was necessary for the contract to be finalized.<sup>9</sup>

If it is determined that the mayor is legally required to authorize the city's lease of property from KMG, then R.C. 2921.42(A)(3) will prohibit you from profiting from a contract with the city for the lease of office space unless, unless the lease results from a competitive bid.<sup>10</sup>

#### **Contract Void and Unenforceable—R.C. 2921.42(H)**

The criminal provisions in the Ethics Law apply to public officials and employees rather than to the political subdivision they serve. However, R.C. 2921.42(H) provides: "Any public contract in which a public official, a member of the public official's family, or any of the public official's business associates has an interest in violation of this section is void and unenforceable."

Therefore, while the city would not be subject to criminal prosecution for a violation of R.C. 2921.42, the violation would negatively impact the city because the contract would be void and unenforceable.

#### **Other Considerations**

Other Ethics Law provisions prohibit you from engaging in certain activities that could affect your business activity:

- R.C. 102.03(D) and (E), in addition to R.C. 2921.42(A)(1), prohibit you from participating, as the city mayor, in any matter that affects the city's lease of property from KMG. Further, R.C. 102.03(D) and (E) prohibit you from using your influence, formally or informally, with other public officers or employees to secure a lease for KMG. You are prohibited from using your unique connection with the city in any manner that would provide an economic advantage for KMG, including securing access to information on competitors and competing prices and quotes.
- R.C. 102.04(C) prohibits you from being compensated by KMG to represent it on matters that are before the city.<sup>11</sup> For example, you could not contact any city official or employee on behalf of KMG.

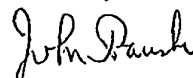
Brandon King  
December 15, 2016  
Page 5

- R.C. 102.03(B) prohibits you from disclosing or using any confidential information you acquire as a public official to benefit KMG.<sup>12</sup>
- R.C. 102.03(A)(1) prohibits you from representing KMG before the city (or any state or local public agency in Ohio) on matters in which you have personally participated as a city official.<sup>13</sup>

Finally, you should consult with the city's legal counsel regarding any policies, rules, or laws, outside of the Ethics Law, that may also be applicable to the situation you have described.

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 this office again.

Sincerely,



John Rawski  
Staff Advisory Attorney

Enclosure: Selling Goods or Services to Public Agency (Local) (Information Sheet # 2)  
Ohio Ethics Commission Advisory Opinion No. 96-004  
Staff Advisory Opinion issued to Brandon King (March 20, 2014)

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).

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

<sup>3</sup> Ohio Ethics Commission Advisory Opinion No. 90-005.

<sup>4</sup> Adv. Ops. No. 81-003 and 81-008.

<sup>5</sup> Adv. Ops. No. 89-008 and 92-003.

<sup>6</sup> Adv. Op. No. 2000-02.

<sup>7</sup> See Adv. Ops. No. 92-013 and 92-017.

<sup>8</sup> See Adv. Ops. No. 87-004 and 92-008.

<sup>9</sup> Adv. Op. No. 88-008.

<sup>10</sup> See 2008 Ohio Atty.Gen.Op. No. 2008-023 (a public board may not dispense with competitive bidding for a particular transaction when the competitive bidding requirement is statutorily mandated). See *Danis Clarkco*

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*Landfill Co. v. Clark Cty. Solid Waste Management District* (1994), 73 Ohio St. 3d 590, 600 ("The RFP method of procurement is not competitive bidding.") Adv. Op. No. 90-003. See also Adv. Op. No. 92-014 and Adv. Op. No. 88-006 (distinguishing between 'competitive bidding' and a political subdivision's 'selection process' for purposes of the public contract provisions of the Ethics Law).

<sup>11</sup> For purposes of R.C. 102.04(C), "personally rendering services" includes, but is not limited to, representing, advising, preparing non-ministerial documents for, or consulting with, any person. You would be personally rendering services if you prepared and submitted reports or billing statements to be given to the city. The prohibition of R.C. 102.04(C) applies even if you are not personally appearing before the city on the matter. A matter is before a city when it is "being considered by, decided by, or in the presence of or under the official purview of" the city. There is an exception, in R.C. 102.04(D), but it does not apply to elected officials.

<sup>12</sup> Adv. Op. No. 88-009.

<sup>13</sup> This prohibition, also known as the "revolving door law," applies to you while you are a city official and for one year after you leave. "Represent" includes *any* formal or informal appearance before or written or oral communication with any public agency, including: drafting formal documents, filings, informal letters, notes, and e-mails, regardless of whether you sign the communication.