



STATE ETHICS COMMISSION  
309 FINANCE BUILDING  
P.O. BOX 11470  
HARRISBURG, PA 17108-1470  
(717) 783-1610  
1-800-932-0936

## ADVICE OF COUNSEL

November 2, 2015

Michael T. Kornis, Esquire  
Avolio Law Group, LLC  
117 N. Main Street  
Greensburg, PA 15601

15-563

Dear Mr. Kornis:

This responds to your letter dated September 10, 2015, by which you requested an advisory from the Pennsylvania State Ethics Commission ("Commission").

**Issue:** Whether the Public Official and Employee Ethics Act ("Ethics Act"), 65 Pa.C.S. § 1101 et seq., would impose prohibitions or restrictions upon a township supervisor, who is also a member of a county municipal authority board, with regard to voting on matter(s) pertaining to the potential sale of the township municipal authority, where the county municipal authority might be interested in buying the township municipal authority.

**Facts:** You request an advisory from the Commission on behalf of Bruce Robinson ("Mr. Robinson"). You have submitted facts, the material portion of which may be fairly summarized as follows.

Mr. Robinson is a Supervisor for the Township of Ligonier ("Township"), located in Westmoreland County, Pennsylvania. Mr. Robinson is also the Secretary/Treasurer for the Township. The Township is governed by a five-Member Board of Supervisors ("Board of Supervisors").

In addition to serving as a Township Supervisor, Mr. Robinson serves as a Member and Vice Chair of the Board of the Municipal Authority of Westmoreland County ("County Municipal Authority"). The County Municipal Authority is a water and sewage authority created pursuant to the Municipality Authorities Act, 53 Pa.C.S. § 5601 et seq. Members of the County Municipal Authority Board are appointed by the County Commissioners for Westmoreland County.

The Ligonier Township Municipal Authority ("Township Municipal Authority") is a water and sewage authority created pursuant to the Municipality Authorities Act. In recent years, the County Municipal Authority has purchased several smaller municipal authorities in Westmoreland County. The Township is considering whether it would be advantageous to sell the Township Municipal Authority. The Township anticipates that

the County Municipal Authority might be interested in buying the Township Municipal Authority.

Based upon the above submitted facts, you seek guidance as to whether the Ethics Act would permit Mr. Robinson, in his capacity as a Township Supervisor, to vote on any motions related to the potential sale of the Township Municipal Authority. In particular, you pose the following questions:

- (1) Whether Mr. Robinson would be permitted to vote to dissolve the Township Municipal Authority;
- (2) Whether Mr. Robinson would be permitted to vote to place the assets of the Township Municipal Authority for sale; and
- (3) Whether Mr. Robinson would be permitted to vote to sell the assets of the Township Municipal Authority if the County Municipal Authority would bid on the assets.

**Discussion:** It is initially noted that pursuant to Sections 1107(10) and 1107(11) of the Ethics Act, 65 Pa.C.S. §§ 1107(10), (11), advisories are issued to the requester based upon the facts that the requester has submitted. In issuing the advisory based upon the facts that the requester has submitted, the Commission does not engage in an independent investigation of the facts, nor does it speculate as to facts that have not been submitted. It is the burden of the requester to truthfully disclose all of the material facts relevant to the inquiry. 65 Pa.C.S. §§ 1107(10), (11). An advisory only affords a defense to the extent the requester has truthfully disclosed all of the material facts.

In each of his positions as a Township Supervisor and a County Municipal Authority Board Member, Mr. Robinson is a public official subject to the provisions of the Ethics Act.

Sections 1103(a) and 1103(j) of the Ethics Act provide:

**§ 1103. Restricted activities**

**(a) Conflict of interest.**--No public official or public employee shall engage in conduct that constitutes a conflict of interest.

**(j) Voting conflict.**--Where voting conflicts are not otherwise addressed by the Constitution of Pennsylvania or by any law, rule, regulation, order or ordinance, the following procedure shall be employed. Any public official or public employee who in the discharge of his official duties would be required to vote on a matter that would result in a conflict of interest shall abstain from voting and, prior to the vote being taken, publicly announce and disclose the nature of his interest as a public record in a written memorandum filed with the person responsible for recording the minutes of the meeting at which the vote is taken, provided that whenever a governing body would be unable to take any action on a matter before it because the number of members of the body required to abstain from voting under the provisions of this section makes the majority or other legally required vote of approval unattainable, then such members shall be permitted to vote if disclosures are made as otherwise provided herein. In the case of a three-member governing body of a political subdivision, where one member has

abstained from voting as a result of a conflict of interest and the remaining two members of the governing body have cast opposing votes, the member who has abstained shall be permitted to vote to break the tie vote if disclosure is made as otherwise provided herein.

65 Pa.C.S. §§ 1103(a), (j).

The following terms related to Section 1103(a) are defined in the Ethics Act as follows:

### **§ 1102. Definitions**

**"Conflict" or "conflict of interest."** Use by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employment for the private pecuniary benefit of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated. The term does not include an action having a de minimis economic impact or which affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the public official or public employee, a member of his immediate family or a business with which he or a member of his immediate family is associated.

**"Authority of office or employment."** The actual power provided by law, the exercise of which is necessary to the performance of duties and responsibilities unique to a particular public office or position of public employment.

**"Business."** Any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust or any legal entity organized for profit.

**"Business with which he is associated."** Any business in which the person or a member of the person's immediate family is a director, officer, owner, employee or has a financial interest.

**"Political subdivision."** Any county, city, borough, incorporated town, township, school district, vocational school, county institution district, and any authority, entity or body organized by the aforementioned.

65 Pa.C.S. § 1102.

Subject to the statutory exclusions to the Ethics Act's definition of the term "conflict" or "conflict of interest," 65 Pa.C.S. § 1102, a public official/public employee is prohibited from using the authority of public office/employment or confidential information received by holding such a public position for the private pecuniary benefit of the public official/public employee himself, any member of his immediate family, or a business with which he or a member of his immediate family is associated.

The use of authority of office is not limited merely to voting, but extends to any use of authority of office including, but not limited to, discussing, conferring with others, and lobbying for a particular result. Juliante, Order 809.

In each instance of a conflict of interest, a public official/public employee would be required to abstain from participation, which would include voting unless one of the statutory exceptions of Section 1103(j) of the Ethics Act would be applicable. Additionally, the disclosure requirements of Section 1103(j) of the Ethics Act would have to be satisfied in the event of a voting conflict.

In applying the above provisions of the Ethics Act to the instant matter, you are advised as follows.

Since the County Municipal Authority is a "political subdivision" and not a "business" as defined by the Ethics Act, Mr. Robinson would not have a conflict of interest under Section 1103(a) of the Ethics Act in matters before the Board of Supervisors that would financially impact the County Municipal Authority but that would not financially impact him, a member of his immediate family, or a business with which he or a member of his immediate family is associated. A pecuniary benefit flowing solely to a governmental entity such as the County Municipal Authority would not form the basis for a conflict of interest under Section 1103(a) of the Ethics Act. See, Confidential Opinion, 01-005; McCarrier/Anderson, Opinion 98-008; Warso, Order 974.

You are advised that absent some basis for a conflict of interest such as a private pecuniary benefit to Mr. Robinson, a member of his immediate family, or a business with which he or a member of his immediate family is associated, Mr. Robinson would not have a conflict of interest under Section 1103(a) of the Ethics Act with regard to voting as a Township Supervisor on: (1) motion(s) to dissolve the Township Municipal Authority, place the assets of the Township Municipal Authority for sale, and sell the assets of the Township Municipal Authority; or (2) other matter(s) pertaining to the potential sale of the Township Municipal Authority.

The propriety of the proposed conduct has only been addressed under the Ethics Act; the applicability of any other statute, code, ordinance, regulation or other code of conduct other than the Ethics Act has not been considered in that they do not involve an interpretation of the Ethics Act. Specifically not addressed herein is the applicability of the Second Class Township Code or the Municipality Authorities Act.

**Conclusion:** Based upon the submitted facts that: (1) Bruce Robinson ("Mr. Robinson") is a Supervisor for the Township of Ligonier ("Township"), located in Westmoreland County, Pennsylvania; (2) Mr. Robinson is also the Secretary/Treasurer for the Township; (3) the Township is governed by a five-Member Board of Supervisors ("Board of Supervisors"); (4) in addition to serving as a Township Supervisor, Mr. Robinson serves as a Member and Vice Chair of the Board of the Municipal Authority of Westmoreland County ("County Municipal Authority"); (5) the County Municipal Authority is a water and sewage authority created pursuant to the Municipality Authorities Act, 53 Pa.C.S. § 5601 et seq.; (6) Members of the County Municipal Authority Board are appointed by the County Commissioners for Westmoreland County; (7) the Ligonier Township Municipal Authority ("Township Municipal Authority") is a water and sewage authority created pursuant to the Municipality Authorities Act; (8) in recent years, the County Municipal Authority has purchased several smaller municipal authorities in Westmoreland County; (9) the Township is considering whether it would be advantageous to sell the Township Municipal Authority; and (10) the Township anticipates that the County Municipal Authority might be interested in buying the Township Municipal Authority, you are advised as follows.

In each of his positions as a Township Supervisor and a County Municipal Authority Board Member, Mr. Robinson is a public official subject to the provisions of the Public Official and Employee Ethics Act ("Ethics Act"), 65 Pa.C.S. § 1101 *et seq.* Since the County Municipal Authority is a "political subdivision" and not a "business" as defined by the Ethics Act, Mr. Robinson would not have a conflict of interest under Section 1103(a) of the Ethics Act in matters before the Board of Supervisors that would financially impact the County Municipal Authority but that would not financially impact him, a member of his immediate family, or a business with which he or a member of his immediate family is associated. A pecuniary benefit flowing solely to a governmental entity such as the County Municipal Authority would not form the basis for a conflict of interest under Section 1103(a) of the Ethics Act. Absent some basis for a conflict of interest such as a private pecuniary benefit to Mr. Robinson, a member of his immediate family, or a business with which he or a member of his immediate family is associated, Mr. Robinson would not have a conflict of interest under Section 1103(a) of the Ethics Act with regard to voting as a Township Supervisor on: (1) motion(s) to dissolve the Township Municipal Authority, place the assets of the Township Municipal Authority for sale, and sell the assets of the Township Municipal Authority; or (2) other matter(s) pertaining to the potential sale of the Township Municipal Authority. Lastly, the propriety of the proposed conduct has only been addressed under the Ethics Act.

Pursuant to Section 1107(11) of the Ethics Act, an Advice is a complete defense in any enforcement proceeding initiated by the Commission, and evidence of good faith conduct in any other civil or criminal proceeding, provided the requester has disclosed truthfully all the material facts and committed the acts complained of in reliance on the Advice given.

This letter is a public record and will be made available as such.

***Finally, if you disagree with this Advice or if you have any reason to challenge same, you may appeal the Advice to the full Commission. A personal appearance before the Commission will be scheduled and a formal Opinion will be issued by the Commission.***

***Any such appeal must be in writing and must be actually received at the Commission within thirty (30) days of the date of this Advice pursuant to 51 Pa. Code § 13.2(h). The appeal may be received at the Commission by hand delivery, United States mail, delivery service, or by FAX transmission (717-787-0806). Failure to file such an appeal at the Commission within thirty (30) days may result in the dismissal of the appeal.***

Sincerely,



Robin M. Hittie  
Chief Counsel