

Minutes for May 23, 2022

Commissioners Present: Crooks, Porter, Cameron

Commissioner Porter was absent for the morning session due to holding Solid Waste Director interviews in Caldwell. He was present during the afternoon session.

Staff Present: Susan Reese

RES 22-0501 Meeting was called to order at 10:00 a.m. on the motion of Commissioner Cameron and the second of Commissioner Crooks.

Vote was Crooks, aye; Porter, absent; Cameron, aye. Motion carried.

Commissioner Cameron moved to approve the payment of bills, pending review.

Seconded by Commissioner Crooks.

Vote was Crooks, aye; Porter, absent; Cameron, aye. Motion carried.

Commissioner Cameron moved to approve the payroll, pending review.

Seconded by Commissioner Crooks.

Vote was Crooks, aye; Porter, absent; Cameron, aye. Motion carried.

The Commissioners took a moment of silence to remember Ann Gildow, City Council Member.

Eric Reed came to update the Commissioners on the ARPA projects.

- Center for Seniors
 - “Referrals” have been clarified; they are still taking referrals for folks that need them; just Title 3 referrals are on hold temporarily
- Avondale
 - Eric has asked Mark Zanghi if insurance or bond is need for Appleman electric who will be doing lighting at Avondale; Has not yet heard back from Mark
 - Commissioner Crooks pointed out that work has been done, in the past, for the County without contractor’s bond
 - Commissioner Cameron is not sure if the requirement is from ORC or County policy
 - Eric has told Linden/Appleman that we will need a contract for the work
- The Wilds
 - EDA grant for The Wilds is funded by ARPA dollars
- Second ARPA Tranche
 - Eric received an email that the second tranche of ARPA dollars will be available soon
 - The portal is open and they are accepting submissions periodically
- Fairgrounds Water Project
 - Eric went Friday to see progress
 - They are down to the Three Gables building and are experiencing no further problems
- Clean Face
 - Eric forwarded the Resolution to request RFP’s to Lepi and Robertson
 - Jeremy has sent RFP’s to Lepi and Robertson

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- OMEGA Broadband meeting today at the Library with Kennedy Blakley

Pam Davis, Human Resources, came to talk with the Commissioners about Housekeeping hiring. The following was then considered:

RESOLUTION 22-0502 approve the employment of Lynnetta Scipio as Full-Time Housekeeper. Starting wage will be \$12 per hour with the opportunity for an increase of \$.50 per hour upon the successful completion of a 180 day probationary period.

Motion made by Commissioner Cameron, seconded by Commissioner Crooks.

Roll Call: Crooks, aye; Porter, absent; Cameron, aye. Motion carried.

Pam distributed current wage information for Housekeeping along with figures for potential increases. Scott feels the Maintenance Budget could support the increase.

The following was then considered:

RESOLUTION 22-0503 authorize and approve to adjust the minimum starting wage for Housekeeping employees to \$12 per hour.

ALSO, BE IT RESOLVED, that this Board authorizes and approves an increase of \$1.00 per hour to all current Housekeeping employees.

These adjustments are to be effective May 22, 2022.

Motion made by Commissioner Cameron, seconded by Commissioner Crooks.

Roll Call: Crooks, aye; Porter, absent; Cameron, aye. Motion carried.

Commissioner Crooks mentioned the 763 Moxahala forfeiture property that received a letter from City Code enforcement.

- Pam had asked Mark Zanghi, Assistant Prosecutor, who would be maintaining the forfeiture properties
- Mark said that he and Ron Welch, Prosecutor, are still discussing to determine maintenance of the properties

Kyle Dunn, Community Development Director, came for CDBG bid opening and the following was considered:

RESOLUTION 22-0504 open bids for Various Streets Paving – Village of Norwich, Muskingum County CDBG.

Motion made by Commissioner Cameron, seconded by Commissioner Crooks.

Roll Call: Crooks, aye; Porter, absent; Cameron, aye. Motion carried.

Estimate:	\$87,956.00
Neff Paving:	\$95,882.16
Albatross Asphalt:	\$95,370.00
NLS Asphalt:	\$96,739.50

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RESOLUTION 22-0505 take bids under advisement for Various Streets Paving – Village of Norwich, Muskingum County CDBG.
Motion made by Commissioner Cameron, seconded by Commissioner Crooks.
Roll Call: Crooks, aye; Porter, absent; Cameron, aye. Motion carried.

There was discussion regarding the Courthouse Fire Alarm Bids and the fact that they are scheduled to be opened at the same time as two other appointments for the Commissioners on Thursday, May 26. Mark Zanghi, Assistant Prosecutor, was called for advice.

Mark came down to the session room and discussed the process.

Mark will attend the Public Auction of 333 Putnam Avenue at 10:00 a.m. in the Courthouse rotunda. He will then come down and acknowledge the receipt of the bids for the Courthouse Fire Alarm System and inform those that may be waiting to attend the opening, that the opening will take place at 2:00 p.m. that afternoon

Commissioner Cameron reported that she called Commissioner Porter this morning and asked if he is coming in today after interviews in Caldwell. He said yes, possibly by noon.

There was discussion regarding the Adoption Center and the fact that dogs are still eating the kennel walls.

- Commissioner Cameron said we've put that much money into it already, what else are we going to do; it's there, we can't just close the doors on it
- Commissioner Crooks said why not try to make it for the next 20-30 years. The good news is that we have the money from the Community Foundation

Commissioner Cameron reported that she had asked the Sheriff if he asked Mark Zanghi if Aramark can charge the Sheriff's office that much extra while being displaced after the Masonic fire.

The Commissioners adjourned for lunch to resume session at 1:30 p.m.

Commissioner Porter returned for the afternoon session.

At the request of Pam Davis, Human Resources, the following legislation was now considered:

RESOLUTION 22-0506 approve the posting of the position of full-time Records Clerk for the Muskingum County Records Center. Starting wage posted at \$11 - \$12.
This request was submitted by Pam Davis, Human Resources.
Motion made by Commissioner Cameron, seconded by Commissioner Porter.
Roll Call: Crooks, aye; Porter, aye; Cameron, aye. Motion carried.

Commissioner Cameron wanted it noted in today's minutes, receipt of a letter from the Board of Revisions. The letter states that there is no oversight rule for the Board of Commissioners and the Board of Revision will not be attending a meeting with Tri-Valley Schools as the Commissioners requested. Commissioner Cameron said she never implied that there was an oversight rule. Twice she has asked when the hearings were and what properties had submitted. She never knew those dates, so she couldn't go to the hearings and listen. So, she would still appreciate Mark Neal being able to come in, even if the Board of Revisions is not coming in. She would

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still like to hear what they have to say.

The Clerk said that Ms. Lindsley, Mr. Neal's Assistant responded with the date of June 9; 2:00 p.m.

Commissioner Porter doesn't understand why the Board of Revisions couldn't come in to just explain. He invited Mr. Neal to a Commissioners' session so he could be here to hear what the Board of Revision has to say.

Commissioner Cameron asked if the Board of Revisions isn't coming, will Commissioner Crooks be here as a Commissioner.

Commissioner Crooks said she would not be here.

Commissioner Cameron it would be fair to hear their reasoning why they asked about it.

Commissioner Porter said to be fair to Tri-Valley explain to them what's going on and if they still would like to come in to have and voice their concerns, he's open for that.

Commissioner Crooks explained that the AMG Board of Tax Appeals hearing is July 26.

Commissioner Cameron said she doesn't need to know that, it's a little late for that now. The first hearing is what she had asked about.

Commissioner Crooks said that is the next step for Tri-Valley so that's why she mentioned it for the minutes.

Commissioner Cameron said it wasn't included in the minutes when the other hearing was, which is when we would have had the chance to go. She understands that we wouldn't have been able to talk because we hadn't filed anything, but we could have gone to the hearing.

Commissioner Crooks said there is a transcript of the hearing, if Commissioner Cameron would want to request that.

Commissioner Cameron said she doesn't need that.

Commissioner Porter moved to approve the minutes of the May 16, 2022 session, with changes.

Commissioner Cameron seconded.

Vote was Crooks, aye; Porter, aye; Cameron, aye.

Motion carried.

Commissioner Crooks moved to approve the minutes of the May 19, 2022 session.

Commissioner Cameron, seconded.

Vote was Crooks, aye; Porter, present; Cameron, aye.

Motion carried.

Commissioner Crooks and Cameron attended a meeting with Kennedy Blakely from OMEGA at the Library, regarding broadband. Commissioner Porter stayed at the office.

Commissioner Crooks and Cameron returned to session at 2:55 p.m.

Commissioner Crooks mentioned an email from Don Madden, Projects Director, asking about an MOU for The Wilds project...asking how to handle the County's contribution to the project.

The Clerk reported that USDA contacted us again to resubmit our application for the Rural Services building office rental, because the project was put on hold last October. The Commissioners agreed to resubmit and signed the cover letter for the application.

Commissioner Porter had a question in regards to the letter from the Board of Revision. It says "the Board can also create and establish Rules of Practice and Procedure which is available for your perusal". He asked if that is something this Board can do, or the BOR Board.

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Commissioner Crooks said that BOR does have Practice and Procedures that they established and he can request them if he wants to look at them.

The Clerk is to notify Tri-Valley and let them know that the Board of Revision has refused to attend the meeting on June 9, but Tri-Valley officials are still welcome to come meet with the Commissioners. Commissioner Porter would still like for them to come and tell their side. Why we can't get an explanation of why the reduction was made is beyond Commissioner Porter. He thinks we would at least owe them that.

Commissioner Cameron asked Commissioner Porter about the progress with the interviews for the Solid Waste Director position. They had a no-show for Monday's interview. They will be re-advertising for the position. Commissioner Porter said he was impressed with the interview of Rob's son, even though he struggles with hiring a family member, after interviewing him, he's convinced he can do the job.

The following was asked to be recorded as transcript:

3:11 p.m.

Crooks:

So we didn't go through communications, anybody got anything?

Porter:

Not unless you want to discuss a confidential email that was addressed to me and CC'd to the Prosecuting Attorney. Seems that word got out to everybody. I'd be more than happy to discuss it.

Cameron:

Well, I would, I mean, I told them I called you today, because I didn't know if you would come when you saw what was on the agenda. And I said, were you going to come because we did a resolution and is Eric... what's he supposed to tell Jeremy? Or if it's going to proceed.

Porter:

Why don't we get Eric down here. If...

Crooks:

...I don't think Eric needs to be here for this, we need to give him direction after we have the conversation. So go for it.

Porter:

I think Eric should hear this because he's put a lot of work in this too.

Crooks:

I don't think this part is for Eric...

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Porter:

Okay. So you say yes. I say no. What do you say Cindy? Make a decision so we can move on.

Cameron:

I don't know why it matters if he's here or if, I mean, if he can come or not. I mean, I don't know why, why he wouldn't listen to it. Unless you want to talk about the ethics part first and then have him come down...

Crooks:

The ethics part, I don't think needs to include Eric. After you get that all out, we can instruct Eric if there's further instructions. So... yes.

Porter:

Okay. I've been approached by over a dozen people within the last several months, wanting to know if there was a conflict between a county commissioner and a spouse being on a fair board. My response was usually, well, my 30 years of training in ethics and open meeting laws, to me there is. But I'm just a dumb farm boy from Sonora. I don't know if you recall me following Mr. Zanghi out of this room one day, several, several, several weeks ago. I finally got him stopped out here by the refrigerator. I said, Mark, what's your opinion about Commissioner Crooks as a Commissioner funding the Fair Board, when a spouse is on the Fair Board? I think I'm quoting him right as, "we probably ought to look into it". That's the last I heard from him. So, I sent an email request to the Ohio Ethics Commission and they responded back that I had to do it in writing, which I did, and their response was up to 45 days to respond... but they would respond. And they said it would be a public document at some time, I'm still waiting, I got the email version, but I'm still, and, Welch was CC'd on the email version, but he will not get a copy of the...what I got here, I'm assuming in writing. The email indicated that I would be getting in writing here at the office, which I was waiting on, but I'll be more than happy to discuss it today. Bottom line is you, I'll just give you each copy of it. In their opinion, it's unethical for you make any decisions pertaining to the Fair Board.

Crooks:

I have a copy.

Porter:

So much for confidentiality, isn't it

Cameron:

So what did the letter just ask what you said? Did you just ask that?

Porter:

That was my question right there...

Cameron:

Can a County....

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Crooks:

That's all you said? This question right here?

Cameron:

Yeah. Okay. That's what I meant. I, I mean, I thought that's what you said. I was just asking if that was your question.

Porter:

Mm-hmm

Crooks:

Well...

Porter:

Their answer is no, a county commissioner cannot participate in matters before the County Commissioners that would provide funding an Agricultural Society Fair Board You can read it, I'm sorry, Susan, (*hands the Clerk a copy of the Ethics Commissioner Opinion*). This is for our minutes.

Crooks:

So when my husband...

Porter:

I'm not done yet...

So, I don't take pleasure in doing this kind of stuff, but I think it's time that there's, there's some credibility restored back into this office when it comes to ethics and open meeting laws. I have not had time to read Mr. Zanghi's open or whatever it is, training session, but I'm gonna go through this one more time. And I should go to my office and get the letter, I found it the other day when I was cleaning it out, where I was accused of breaking the open sunshine law, particularly to discussing County matters by Mr. Todd Sands. I was summoned to the Prosecutor office, which was Mr. Haddox at that time, and he read the letter and I told him what I thought of Todd Sands. After that I was summoned to Judge Kelly Cottrill's office, each one of us privately. And the result of that, I'm assuming it was a compromise that there wouldn't be any charges pressed, if we all agreed to go to this open meeting, public records, training, that again, in my past 30 years as elected official, I've been to multiple ones and several of them was taught by that, David... Altier.

We had to go to Columbus for almost a whole day and take this course again, which he's telling us everything that mostly goes on here is, is a violation of open meaning law, up until a few years ago, when we got a new Prosecutor, never had an issue. Now I think the interpretation is different, I'll put it that way from this Prosecutor. I never really give much thought because I was told I would never win in the Court of Common Pleas here until I received that letter from Mr. Zanghi or an email, about someone suing another county and winning, but he had to go to a Court of Appeals. So that may be the next angle. I realize I'll lose here because I'm almost 99% sure I'll win in a Court of Appeals. So just asking you, start going by the rules, that's all I'm asking.

Crooks:

Well, that's a good segue because when my husband was elected to the Fair Board, I did seek the Prosecutor's Office's legal counsel because they are our designated legal counsel. And I was instructed,

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by Mark Zanghi that because it was not a paid position, there was no issue with me participating in any type of discussion or appropriation for that. I confirmed that again with Mark, that that is indeed what he advised me. And he confirmed yes, that is what I was told. So anything I've done to this point was under the guidance of our designated legal counsel. So if you...

Porter: We could go on...

Crooks:

... I'm not done now, if your spiteful vengeful behavior is what you need to make yourself feel better, that's on you. But, I did...

Porter:

I get tired of going out of County, even in County and having Jim Porter's name smeared for just vicious lies. That's what really upsets me. And I told Susan, I've got a five year old grandson that's going to have Porter behind his name, his whole life. And, I do not appreciate people falsely smearing the Porter name. Am I perfect? Heck no...heck no

Crooks:

I think you drew first blood and you made it personal so ..., I applied for a job and I ran against you and you've never gotten over it.

Porter:

You got beat, too. You didn't win.

Crooks:

Yeah, I did. I did, you're right.

Porter:

And we may just see that again in a couple years. We may see what happens then.

Crooks:

Well, knock yourself out because you made it personal and this is where it ended up.

Porter:

Yep.

Crooks:

So we can either say move forward and get these next six months under our belt...

Porter:

Can't come quick enough.

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Crooks:

I can agree with you on that, but I did do my due diligence, as I always do, to see how I should go forward.

Porter:

Okay.

Crooks:

So to me, you didn't get...to me, I mean, just like when Bud was here, we can ask as many different attorneys as have opinions. And so if you ask enough of them, you'll get the one you wanted, which you did.

Porter:

I only asked one, I went to the right place, the Ohio Ethics Commission. That's their job.

Crooks:

Well, why do we have Prosecutor's Office as our legal counsel? That was my first point of inquiry.

Porter:

So if I'm hearing you're right, you're saying that it's okay. Disregard Ethics Commission go about business as usual with the Fair Board.

Crooks:

No, I'm saying that I was operating under the legal guidance. Now you've got different legal guidance. So I mean who's right? Right now they seem to have the, the oversight...

Porter:

What did Zanghi tell you guys the other day when he come down here?

Crooks:

Tell us about what?

Porter:

Well, I hear he come down and talk to you about it.

Crooks:

Oh, about this?

Porter:

Yeah.

Crooks:

Well, yeah, this is, this is...

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Porter:

Behind closed doors.

Crooks:

We were adjourned. God, you got a spy in here? I mean, nothing ...

Porter:

There's no secrets in here. I knew you guys seen that last week. <laugh> but again, I was waiting on written....

Cameron:

Mark did not tell me about this. I mean, when Mark came down, Mollie said, I haven't said anything about this yet. We haven't had a chance, but I mean, don't... Mark did not when he came down here.

Porter:

Okay. So I'm asking you, what did he tell you? Did he say disregard this? What we say is...

Crooks:

I didn't say disregard it. I'm just saying that up until that opinion I was operating under...

Porter:

I'll give you that

Crooks:

...the legal counsel that I was given. You then sought a different counsel and now you have a different opinion given to us. And again, I'm so by right now, I have to abide by that until I see if there's any other counter to it

Porter:

I'm basing that on 30 years of attending all these trainings, which I...

Crooks:

I guess I just don't get it. I mean, we can have...it doesn't matter...we're not going to agree, so...

Porter:

That's true.

Crooks:

You've got your opinion. I've got mine.

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Porter:

Yep. I just want to know how you're going to proceed with Fair Board decisions now.

Crooks:

Guess you'll see.

Porter:

Because we got some very important ones to decide here.

Crooks:

Guess you'll get to see.

I just would hope we would move forward instead of just sitting in limbo so we can spend our time arguing.

Porter:

I agree one hundred percent. The intent over a year ago was to, to make Clean Face usable again.

Crooks:

And we both have that as a goal. It just seems like you had a different plan to get there. And so from, I see it's not your plan. So everything is in limbo, but the money has been appropriated. That's been done. Things are going forward, so...

Cameron:

He did not dispute, I mean, there's two and a half pages or three pages here of Ohio Revised Code. When you ask, what did he say? He did not dispute or say that these are not, that he did not agree with it. I mean, he just said there was a lot in there. So if you're asking if he said not to pay attention to this, that's not what he said. I mean, I think how could three pages not...

Porter:

What bothers me the most is he came, I don't know if he seen you or not, but he came just, the email was addressed to me and said confidential. And, and again, this, it is all public records, they even said that as soon as I initiated the call, I said, great. I look forward to it. Why wouldn't he contact me as well, one of them?

Cameron:

Well, I figured because he knew, I, I don't know this, but I mean, it was addressed to you, so he knew that you got it. But then when Ron got a copy, I assume...

Porter:

Ron was CC'd on the, on the email.

Cameron:

But, isn't this, the email, I mean isn't this letter the email?

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Porter and Crooks:

That's the attachment.

Cameron:

Yeah. Okay.

Crooks:

Yeah. Well he's attached...

He's CC'd on the email. I mean he's, CC'd on the letter. Ron is CC'd on the letter and email, I'm assuming...

Porter:

He's not going to get a copy of it, but he was CC'd on the email that...

Crooks: He did get a copy of it...

Cameron:

He's got a copy of attachment. But did the email say Confidential?

Porter:

(to Commissioner Crooks) He got an email attachment. He's not going to get one in a letter form is what I'm trying to explain the email that I received

Cameron:

But so did the email say confidential on it?

Porter:

Yes...from her.

Cameron:

Okay.

But see what he got. I don't even know if that did say...

Porter:

It doesn't matter.

Cameron:

That's right.

Porter:

It's all out anyhow

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Cameron:

That's right.

Porter:

I'm just amazed that some stuff is, is top secret. And then other stuff that is just broadcasted all over the place, we just pick and choose.

Cameron:

I never saw the word confidential and I never heard him say that. So I figured because he, I don't know this, but he didn't call you because he knew you got it and that we didn't get it. And I...

Porter:

I would like to have heard his opinion, as well, if he was explaining it or what he was talking about.

Crooks:

Well, I can't speak for him, but my assumption would be because I reached out, I got counsel from the Prosecutor's Office and this opinion is contrary. And in fact the exact opposite of what they had given me, that it was them notifying me that this opinion would override. That is what I think happened. I asked for guidance, they gave me guidance. It's different than what this is...

Porter:

I think they can get their guidance at the same place, I got mine too.

Crooks:

I don't think they need to go to the Ethics Commission for their guidance

Porter:

I think they do because they obviously told you one thing and the Ethics Commission's saying something else.

Crooks:

So okay. Point taken, move on.

Porter:

Yep. I'm ready to move on

Crooks:

I'm more than ready.

Are there any other communication? Anything on anything?

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Cameron:

Yeah, I thought we were going to have Eric come down. So what are we doing about the resolution to Jeremy?

Porter:

I'm sorry to what?

Cameron:

About the resolution with Jeremy? So...

Porter:

I think we have to proceed in picking or reviewing the RFQ's and pick one.

Cameron:

Kacey, will you ask Eric to come down?

Kacey:

Yes.

Cameron:

But so nothing changes. Everything is okay that was done before. But from now,

Porter:

No, I don't know that

Crooks:

I do. I asked the question. That's what I just said twice. I asked the question...

Porter:

That came from the Prosecutor.

Crooks:

Yeah.

Porter:

Okay. I'll ask another opinion up there then, about previous.

Crooks:

Well there's no way to go back and change it. What's the sense? I don't know what you're trying to accomplish now. Do you want to move forward on this project or you just want to keep throwing up roadblocks? Because if you don't want to move forward, then we can just postpone it until next year.

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Porter:

I don't think that's a decision you can make.

Crooks:

It is a decision I can make.

Porter:

We may want to hold off then.

You know I don't know, I shouldn't say that, you two can decide.

Cameron:

I don't think us two can decide because Mollie's not...

Porter:

She's saying you can

Crooks:

I can. I mean, if we agree to postpone a project, that's not doing anything about the conversation. That's postponing a project. I'm just saying, do you want to postpone it or do you want keep this pissing match going, or do you want to move forward and get this done for them? That's up to you two.

Cameron:

Does this only say about money or any talk or anything about the fair board?

Crooks:

According to this? I can't even talk about it, which I find interesting...

Porter:

They can't even discuss it at home

Crooks:

Because your, I mean, you could talk about the JEDD agreement. I mean, I just don't understand.

Porter:

No, I think the same principle applies to the JEDD agreement.

Crooks:

Well, it didn't

Porter:

I think it could. It should.

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Crooks:

Well, You didn't do it on that one, I guess. So, you know, I don't know how we're supposed to operate in a small community.

Porter:

You're supposed to do ethically.

Crooks:

I'm taking that advice from you?

Eric Reed entered session.

Porter:

How's your day, Eric?

Crooks:

They called you down. So...

Speaker 1 ([18:04](#)):

Eric, instead of her saying, "they" called you down. Jim asked for you to, let's say how it really went, Jim asked for you to come down. Mollie said you did not need to come down. (*Commissioner Porter handed Eric a copy of The Ethics Commissioner Opinion*) And I said, if we're talking about something about the Ethics Commission, are you saying that Eric, and Mollie said, that's he doesn't need to be here for that. And I said, then Eric could come when we talk about the Fair Board project, would that not be true Mollie?

Crooks:

I thought that's what we were ready to talk about, Cindy.

Cameron:

Yeah. So when you just said "they" called you down,

Crooks:

I'm sorry. I was not complete. This is to talk about something I can't talk about

Reed:

The packets that the guys sent. Not completed...

Porter: *to Eric*

Could you make recommendations? Would you?

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Reed:

This minute? No,

Porter:

No, no. Cause I'm going to be honest. I have not read them. I apologize. I've been busy at home.

Reed:

Yeah. I'm glad. I mean, I plan to read through them I, I glanced at them. There's letters of recommendation. There's past experiences. There's...

Porter:

Are you going to use the scoring process when you do that?

Reed:

Well, I figured we would do that with the RFPs when they submit their proposals. We'll use that scoring process. Cause we'll wait...

Porter:

We're okay....they'll bring them in and...

Reed:

We'll wait their process...

We'll wait their experience with their price, et cetera.

Porter:

Gotcha. Are we moving forward on that?

Reed:

Uh, well we passed the resolution to issue the RFPs on Thursday. So I sent Jeremy the email last week, but he was out Wednesday to Friday and he responded this morning and said he issued RFPs to the short list firms, which is Robertson and Lepi. So we will get those back on the 31st. That's when we'll have the number. We should have the numbers.

Porter:

When, when will they come in here and ask us to hire them?

Reed:

Well, we'll have, uh, the RFPs received the 31st and on that document we gave them until....

Porter:

Okay. May 31st.

Reed:

Yeah, May 31st. And we had until June 13th to conduct interviews.

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Porter:

All right.

Reed:

If we so choose and that's our discretion.

Porter:

Gotcha. I'm okay with that.

Reed:

I reported earlier at your meeting that I was down there and looked at the water line in there, right in front of three Gables from Clean Face down between the lama barn and the Coliseum down around the rabbit barn in terms of going, heading towards the Veteran's Building now in front of almost the chicken barn

Porter:

Should get easier now, too

Reed:

That was what I said. I thought, in my opinion, they're through the hard stuff. And they found...really relatively been pretty lucky, just a few, you know, water lines that we kind of knew were in there. Um, but they, I think it's going better than maybe expected. I don't know when they'll be done, but I can't think that I, like I said, hard stuff, in my opinion's over they're straight shot to the connection now.

Porter:

So they're, they're going through the race track, right?

Reed:

Well, they're still on the midway. They're still on the midway side.

Porter:

They'll able to get on the race track side?

Reed:

Yeah, because that connection's on that side. They're just not far enough down to where they'll have to cross over yet. That's where we are with it.

Porter:

They've been bad on weather like everybody else.

Reed:

Yeah.

Minutes for May 23, 2022

Reed:

Anything else?

Porter:

I guess that's it.

Reed:

Okay. I'll have a week from, well, the 31st Tuesday because Monday we're off. So Thursday of that week we'll have the proposals. Sound good? Thanks.

Porter:

Jeremy's gonna sit in on the interview of the scoring?

Reed:

Yeah. Oh yeah, yeah, yeah.

Cameron:

Did you say Don is not going to the thing at National Road? Because he asked you and Zach?

Reed:

Yeah. He's got progress meetings going on for the projects that are going on currently.

Cameron:

So Zach's going and you're going, right?

Reed:

Yeah.

Cameron:

Okay. Thank you.

Crooks:

Anything else?

Porter:

Uh, yeah, This, I was gonna bring up several meetings ago. I know, I'll be accused of nit picking as well. *(to Crooks)* You sent out an email on behalf of the County Commissioners to elected officials and others, telling them that the Commissioner's Office has decided to hire DLZ. Well, I recall voting no on that. So I think you were misleading people on that email as well. So, just pay more attention to that.

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Crooks:

So a majority rule by this Commission does constitute a decision. So you just want me to start saying that...

Porter:

Say like you always say, Cindy and I. Yep. That's all I hear out of you....Cindy and I.

Crooks:

And then you complain about that. So it's not gonna matter what I do. It's.....

Porter:

December 31st, 2022. No, I'll probably cave before that..... Good for you.

Crooks:

Do you have anything else?

Porter:

Nope. Move to adjourn.

Crooks:

Susan, did you have anything else?

Porter:

I'm sorry,

Clerk:

I don't. I spoke out of turn earlier.

Porter:

I'm sorry?

Clerk:

I think I probably spoke out turn with my communications earlier, so...

Clerk:

I'm sorry. Did I miss a second?

Crooks:

Cindy, I didn't hear a Second

Minutes for May 23, 2022

Cameron:

I didn't say anything

Crooks:

Second

Clerk:

Crooks

Crooks:

Aye

Clerk:

Porter

Porter:

Aye


Clerk:


Cameron

Cameron:

Aye

With no further business being before the Board, the meeting was adjourned at approximately 3:35 p.m.


Mollie S. Crooks


James W. Porter


Cindy S. Cameron

This is a condensed version of today's session. For a more detailed account, feel free to request a DVD recording.

Merom Brachman, *Chairman*
Mark A. Vander Laan, *Vice Chairman*
Bruce E. Bailey
Megan C. Kelley
Julie A. Rutter
Elizabeth E. Tracy



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Executive Director

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May 18, 2022

James W. Porter
Muskingum County Commissioner
401 Main Street
Zanesville, OH 43701

Dear Mr. Porter,

On April 8, 2022, the Ohio Ethics Commission received your letter requesting an advisory opinion.

Question Presented and Brief Answer

Can a County Commissioner appropriate funds to an Agriculture Society Fair Board if his or her spouse serves on the Fair Board?

No, a County Commission cannot participate in matters before the County Commissioners that would provide funding to an Agriculture Society Fair Board because his or her spouse has a definite and direct interest in the Board's contracts. Further, a member of an Agriculture Society Fair Board organized under Chapter 1711. of the Revised Code is not subject to Section 2921.42 nor Chapter 102. of the Revised Code.

Commission Precedent

Enclosed with this opinion are Advisory Opinions No. 2009-02 and 92-007. Some of the issues you have raised in your request are similar to the situations discussed in these opinions. This opinion will note the key elements of these advisory opinions as they apply to situations of the kind you described, but the entire reasoning and conclusions in Advisory Opinions No. 2009-02 and 92-007 are incorporated in this response as if fully restated herein.

R.C. 1711.081

R.C. 1711.081 provides in pertinent part:

The positions of members of the board of directors, officers, and employees of a county or independent agricultural society are not public offices, and persons holding such positions are eligible to hold any public office except for the office of county commissioner.

In Advisory Opinion No. 92-007, the Commission determined that a member of an Agriculture Society Fair Board organized under Chapter 1711. of the Revised Code is not subject to Section 2921.42 nor Chapter 102. of the Revised Code. Thus, an Agriculture Society Fair Board is treated as private entity for purposes of the Ethics Law.

Participating in Appropriations for the County Fair Board—R.C. 2921.42(A)(1)

A County Commissioner is subject to R.C. 2921.42(A)(1),¹ 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.

A "public contract" is the purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of a political subdivision.² The Ethics Commission has determined that the term "public contract" includes a political subdivision's provision of financial assistance to a business, nonprofit corporation, or other entity from which the political subdivision acquires economic development services.³ Further, R.C. 2921.42(A)(1) prohibits a public official from authorizing or employing the authority or influence of his or her office to secure authorization of any public contract in which a member of his or her family has an interest. An official's spouse is a member of his or her family for purposes of this restriction.⁴

A prohibited interest in a public contract must be definite and direct, and can be either financial or fiduciary in nature.⁵ A person who serves as a board member of an organization serves in a position of trust and authority and therefore has a fiduciary interest in the contracts of that board.⁶ Therefore, because the spouse serves as a member of the Agriculture Society Fair Board, he or she would have a fiduciary interest in the contracts of the Fair Board.⁷

Because the County Commissioner's spouse serves in a fiduciary role with the Agriculture Society Fair Board, R.C. 2921.42(A)(1) would prohibit the Commissioner from participating in matters before the County Commissioners involving any funding provided to the Agriculture Society Fair Board, or other matters that constitute a "public contract." A public official uses his or her position to secure authorization of a public contract if the public official votes on, deliberates on, recommends, formally or informally lobbies for, or takes any other official action on the contract. Therefore, the County Commissioner would not only be prohibited from voting on these funding matters, but he or she would also be prohibited from discussing, deliberating, or otherwise using the influence of his or her position as a County Commissioner to secure funding to the Agriculture Society Fair Board.

The County Commissioner would also be prohibited from using his or her position as a Commissioner to secure authorization of any other public contracts between the County and Agriculture Society Fair Board.

Conflict of Interest Prohibitions—R.C. 102.03(D) and (E)

Your question also involves the application of R.C. 102.03(D) and (E), which provide:

- (D) No public official or employee shall use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.
- (E) No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

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 of any governmental entity.⁸ Thus, as a County Commissioner, the Commissioner is a "public official or employee" subject to the prohibitions of R.C. 102.03(D) and (E).⁹

The term "anything of value" is defined for purposes of R.C. 102.03 in R.C. 1.03 to include money and every other thing of value.¹⁰ A fiduciary interest is within the definition of "anything of value" under R.C. 102.03(D) and (E).¹¹

R.C. 102.03(D) and (E) prohibit a public official from soliciting or using his or her position to secure anything of value, including any favorable decision, if the thing of value is of such a character as to have a substantial and improper influence upon the official with respect to the performance of his or her official duties. Where a matter before a public agency will result in a definite and direct thing of value accruing to an official of the agency, or any person with whom the official has a close family, business, or economic relationship, the thing of value will have a substantial and improper influence upon the official with respect to the performance of his or her duties.¹² In such a situation, the official is prohibited from participating, in any way, in the decision-making of the agency related to the matter.

Thus, R.C. 102.03(D) and (E) prohibit the County Commissioner from using his or her public position to secure a definite and direct thing of value for his or her spouse and the Commissioner is prohibited from participating in any funding matters before the County involving the Agriculture Society Fair Board.¹³

Confidentiality Restriction—R.C. 102.03(B)

R.C. 102.03(B) prohibits the County Commissioner from disclosing or using, without appropriate authorization, any confidential information that he or she acquires as a Commissioner.¹⁴ There is no time limit for this prohibition.¹⁵ This restriction means that the Commissioner cannot disclose to his or her spouse on the Agriculture Society Fair Board, or any other person or entity, any confidential information the commissioner acquires while serving as a Commissioner, or use it in any other way, without appropriate authorization.

This advisory opinion represents the views of the undersigned. It is based on the facts presented and is limited to questions arising under Chapter 102. and Section 2921.42, 2921.421, and 2921.43 of the Revised Code and does not purport to interpret other laws or rules. Please do not hesitate to contact this Office if you have any further questions or if you wish to request reconsideration of this opinion under OAC 102-3-07.

Sincerely,



Kristin Cly
Staff Advisory Attorney

Enclosure: Advisory Opinion No. 2009-02
Advisory Opinion No. 92-007

CC: Ron Welch, Muskingum County Prosecutor (via email only)

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

¹ R.C. 2921.01(A); Ohio Ethics Commission Advisory Opinion No. 80-006.

² R.C. 2921.42(I)(1)(a).

³ Adv. Ops. No. 83-005, 84-011, and 85-002. See *State v. Lordi*, 140 Ohio App.3d 561, 569 (2000). *discretionary appeal not allowed*, 91 Ohio St.3d 1523, 91 Ohio St.3d 1526, 91 Ohio St.3d 1536, *motion for reconsideration denied*, 92 Ohio St.3d 1422 (2001).

⁴ Adv. Ops. No. 80-001 82-003, 89-005, and 90-010, 2009-02, and 2010-03. The definition of "member of a public official's family" includes, but is not limited to, these relatives of an official or employee, regardless of where they live: parents and step-parents; grandparents; spouse; children and step-children, whether dependent or not; grandchildren; and siblings. Adv. Ops. No. 2008-03 and 2010-03.

⁵ Adv. Ops. No. 78-005, 81-003, and 81-008.

⁶ See Adv. Ops. No. 92-004 and 96-005 (an officer, board member, or trustee of an organization, whether for profit or nonprofit, has a definite and direct fiduciary interest in the organization's contracts even if she is not compensated for her service). See also Adv. Ops. No. 78-006, 86-005, and 89-008.

⁷ An agricultural society and the elected county officers of the county in which it is located are required to closely cooperate and deal with each other, especially with respect to the county's financial support of the society. Att'y Gen. Ops. No. 84-053 and 84-026. A county agricultural society receives funds and support from the board of county commissioners of the county in which it is located. A board of county commissioners may purchase or lease real estate to serve as a fairground for a county agricultural society and to appropriate moneys to generally improve the site. R.C. 1711.15. When a county or a county agricultural society owns or leases real estate used as a fairground, the board of county commissioners shall, upon request from the society, annually appropriate money to the society for the purpose of encouraging agricultural fairs. R.C. 1711.22. Also, a board of county commissioners insures the county agricultural society's buildings. R.C. 1711.24. Furthermore, R.C. Chapter 1711. contains provisions for the issuance of county bonds to pay the debts of an agricultural society. R.C. 1711.18-.21. See also R.C. 1711.27-.30. (payment or issuance of bonds to acquire a new site). The board of directors of an agricultural society may act only with the consent of the board of county commissioners on certain matters where county funds have been provided to an agricultural society. R.C. 1711.13 (mortgaging of fairgrounds); R.C. 1711.16 (erection and repair of buildings and

site improvement); R.C. 1711.25 (sale, lease, purchase, and exchange of site); R.C. 1711.33 (encumbering of fairgrounds partly owned by the county).

⁸ R.C. 102.01(B) and (C).

⁹ Adv. Op. No. 95-006.

¹⁰ R.C. 1.03; R.C. 102.01(G).

¹¹ Adv. Op. No. 86-007.

¹² Adv. Op. No. 97-002.

¹³ Adv. Op. No. 2010-03.

¹⁴ Adv. Op. No. 88-009.

¹⁵ *Id.*