



**LAW DEPARTMENT
OFFICE OF PROSECUTION**

12650 Detroit Avenue, Lakewood, Ohio 44107
(216) 529-6030 | Fax (216) 228-2514
www.onelakewood.com
law@lakewoodoh.net

Direct dial: (216) 529-6034
kevin.butler@lakewoodoh.net

KEVIN M. BUTLER
DIRECTOR OF LAW

PAMELA L. ROESSNER
CHIEF PROSECUTOR

JENNIFER L. MLADEK
CHIEF ASSISTANT
LAW DIRECTOR

MANDY J. GWIRTZ
ASSISTANT PROSECUTOR/
ASSISTANT LAW DIRECTOR

April 24, 2015

Paul M. Nick
Executive Director
Ohio Ethics Commission
30 West Spring Street, L-3
Columbus, Ohio 43215

Re: Request for Advisory Opinion for City of Lakewood, Ohio

Dear Mr. Nick:

I represent the city of Lakewood, Ohio and seek guidance regarding the Ohio ethics laws applicable to their participation in the potential transformation of Lakewood Hospital into a family health care center. My questions concern the Ohio ethics laws addressing potential conflict of interest issues that may arise from the participation of the following individuals in the consideration and approval of this transition: (a) Lakewood public officials serving *ex officio* on the board of trustees of the Lakewood Hospital Association ("LHA"); (b) a city councilman who is a partner in a law firm representing the Lakewood Hospital Foundation, Inc. ("LHF") in unrelated matters and which has certain personnel sitting the boards of trustees for LHA and LHF; and (c) the mayor, Michael Summers, whose wife serves on the LHF's board of trustees.

A. Questions Concerning the Service of the Mayor and Two City Council Members on the Board of Lakewood Hospital Association's Board of Trustees.

Recently the LHA signed a non-binding letter of intent with the Cleveland Clinic that contemplates the closing of Lakewood Hospital, the opening of a family health clinic, and certain other activities. We are examining any potential ethics concerns related to the mayor and two members of city council serving as *ex officio* members of the board of trustees of LHA and the role they may play in voting in favor of entering into any contract provisions with any entity seeking to purchase the hospital.

Lakewood Hospital's land and building are owned by the City of Lakewood and, since 1987, have been leased to the Lakewood Hospital Association by ordinance pursuant to authority explicitly found in our charter. LHA was created as a nonprofit hospital agency for the operation of a community hospital (Lakewood Hospital) pursuant to ORC Chapter 104. The Cleveland Clinic is the only corporate member of LHA. LHA is governed by a board of trustees. The board's membership is detailed in the lease agreement, which states, "The Governing Board will be composed of twenty-three members consisting of the Mayor of the City; two members of the Council of the City ... selected by Council [and others]."

Lakewood Charter provides for potential of a conflicts of interest in the following manner:

"The Mayor [and] members of Council ... shall not, during their term of office, be interested in the profits or emoluments of any contract with or job, work or service for the City. ... This Section shall not prohibit the Mayor [or] members of Council ... from serving as a member or an official in any other nonprofit corporation where their service is in the capacity of representing the City. ... [W]here the Mayor [or] members of Council are members or officials of a nonprofit corporation permitted by this Section, such persons shall not be deemed to be interested in the profits or emoluments of any contract, job, work or service for the City or other transaction because of any contract or other transaction between the City and such ... nonprofit corporation; and the Mayor, members of Council and the directors of departments and other officials or employees of the City may fully participate (a) in their respective official capacities in the deliberations by the City or its agencies, and (b) in their capacity as members or officials of such ... nonprofit corporation, including the right to vote with respect to such contract, job, work, service or other transaction."

Charter Article 23 §3.

Thus, Lakewood's mayor and two councilmembers, as ex-officio trustees of the LHA, serve both the LHA and the citizens as they discuss and potentially vote on issues involving healthcare in Lakewood and the future of city assets. I believe Lakewood's charter resolves any conflict, and the Commission previously provided official guidance in confirming that the Ohio Ethics Laws permitted Lakewood city officials to serve as ex-officio trustees of the board overseeing the hospital,¹ but I would like to confirm with the Commission that there is no conflict of interest involved in these circumstances that would violate Ohio's ethics laws.

B. Questions Concerning the Representation of LHF by a Law Firm in which Councilman Nowlin is a Partner.

Lakewood has a member of council, Ryan Nowlin, who is a partner in a law firm. The firm represents, on general matters, LHF, which is an Ohio non-profit corporation formed in 1956 for

¹ See September 3, 1986 Ohio Ethics Commission Advisory Opinion issued to Mr. Fred DeGrandis, former Vice President and General Counsel of Lakewood Hospital.

the purpose of aiding in the growth and development of Lakewood Hospital and to meet the health and welfare needs of the community. The articles of incorporation of LHF specifically grant powers, in addition to those conferred by the state of Ohio, to the LHF to acquire by devise, gift, purchase or otherwise, and hold for investment or trust, sell, lease, mortgage or dispose of any money, business, real estate, stocks, or bonds. LHF is a non-profit that exists for purposes of fundraising and supporting the hospital. The same councilmember's law firm employs an associate attorney who serves as an unpaid trustee on the board of LHF.

Lakewood Hospital is leased by the city of Lakewood to the Lakewood Hospital Association, Inc. ("LHA"), a different Ohio non-profit entity, which in turn has agreed with the Cleveland Clinic to operate and control Lakewood Hospital. Mr. Nowlin has a partner in his law firm who serves as an unpaid trustee of LHA.

Because the recently announced proposal to enter into a new agreement governing the closure and demolition of Lakewood Hospital and creation of a family health care clinic would involve many city assets, the proposal requires considerable input from and ultimately approval of Lakewood City Council.

We are told the councilmember's law firm does not represent LHF on any matter directly related to these announced plans and does not represent LHF in any matter that may potentially go before city council for vote and approval related to the negotiations between the Cleveland Clinic, the city, LHF and LHA.

Here are the questions which have been raised:

1. Can a member of council deliberate or vote on a matter involving a non-profit foundation, while he is a partner at a law firm which advises the foundation on items not directly related to the matter to be voted upon, and where the foundation has separate independent counsel advising it on the matter to be voted upon?
2. Can a member of council deliberate or vote on a matter involving a non-profit entity, whose uncompensated board of trustees includes a law partner of the councilmember?
3. Can a member of council deliberate or vote on a matter involving a non-profit foundation, whose uncompensated board of trustees includes an associate of the councilmember's law firm?

C. Questions Concerning the Involvement of the Mayor in Light of His Wife's Service on the LHF Board of Trustees.

Mayor Summers' wife, Wendy Summers, currently serves on the LHF board of trustees. Ms. Summers receives no compensation for her service on this board. Her service commenced before Mayor Summers was elected as mayor of Lakewood. We are informed that Ms. Summers does not have direct day-today involvement in the administration of LHF, nor does she have control over the administration of any of its contracts. We would like the Commission's opinion

as to whether Ms. Summers' service on the LHF board of trustees creates a fiduciary interest on behalf of LHF than can be imputed to Mayor Summers and which would prevent his involvement in the consideration and approval of the transaction.

Thank you for your assistance with these matters.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Kevin M. Butler".

Kevin M. Butler