



OHIO ETHICS COMMISSION

150 EAST BROAD STREET

COLUMBUS 43215

(614) 466-7090

Advisory Opinion No. 75-019

August 19, 1975

Syllabus by the Ohio Ethics Commission:

A person who serves as an employee of a private corporation, doing business as a public defender agency, within a city county area does not violate per se the prohibitions of Section 102.04 (B) of the Revised Code by holding the office of councilman-at-large of the city served by the public defender agency.

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Your request for an advisory opinion asks "whether holding employment with a public defender agency and the office of city councilman" could be considered a conflict of interest. You state that you are employed by the public defender agency as a part-time assistant public defender and as such provide legal counsel to indigent persons who have been charged with a violation of either the state or municipal criminal codes. You state further that you intend to seek the office of city councilman-at-large and serve in both positions simultaneously.

The section of the ethics law pertinent to your question is Section 102.04 (B) of the Revised Code:

"No person who is elected or appointed to an office of or employed by a county, township, municipal corporation, or any other governmental entity, excluding the courts, shall receive or agree to receive directly or indirectly compensation other than from the agency with which he serves for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter which is before any agency, department, board, bureau, commission, or other instrumentality, excluding the courts, of the entity of which he is an officer or employee."

The first issue is whether you as an employee of a public defender agency are a person who is "employed by" a county, township, municipal corporation or any other governmental entity so as to fall within the purview of the prohibitions contained in Section 102.04 (B) of the Revised Code.

Records maintained by the corporation section of the Office of the Secretary of State reflect that the public defender agency was incorporated as a private corporation on December 11, 1972. The records further show that on February 12, 1973 an amendment was filed to change the name of the corporation. The articles of incorporation state that the corporation shall use its property and income for the "promotion of and assistance in, directly and indirectly, the provision of adequate legal representation for indigent persons resident in . . . " the county.

Section 1702.04 of the Revised Code provides for the incorporation of nonprofit corporations. The Ohio Ethics Commission in Advisory Opinion No. 75-013 distinguishes nonprofit corporations with public purposes from governmental entities:

"The provisions of Chapter 102 of the Revised Code apply to 'public officials and employees' and 'persons elected or appointed to an office of or employed by' an agency of the state, county, township, municipal corporation or other governmental entity.

The governmental or public agencies referred to in Chapter 102 of the Revised Code are entities created by the Constitution or legislative bodies of the state, county, township, or municipal corporation.

Non-profit corporations formed under Section 1702.04 of the Revised Code can be distinguished from these public or governmental agencies in that the non-profit corporations, by virtue of Section 1702.04 of the Revised Code are created by:

‘(A) any person, singly or jointly with others, and without regard to residence, domicile or state of incorporation, may form a corporation by signing and filing with the Secretary of State articles of incorporation, . . .’

Thus, although the activities and functions of a non-profit corporation may be of a public nature, the corporation is not a governmental agency for purposes of Chapter 102 of the Revised Code.

The prohibitions of Chapter 102 of the Revised Code, therefore, do not apply to persons participating through non-profit corporations in services to their community. . ."

Thus, a person, employed by a non-profit corporation which has as its purpose public service, is not a person "employed by the county, township, municipal corporation or other governmental entity" as addressed by Division (B) of Section 102.04 of the Revised Code.

A person who serves as councilman-at-large for a city would certainly be a person "elected to an office of . . . a . . . municipal corporation" and, fall within the purview of Division (B) of Section 102.04 of the Revised Code. Thus, such a person is prohibited from receiving compensation for rendering services personally in a case, proceeding, application or other matter which is before a city agency, excluding the courts.

This prohibition would extend to the receipt of compensation by a city councilman for rendering services as an employee of a public defender agency in matters before any agency of the city, excluding the courts. However, Section 102.04 (E) of the Revised Code does not prohibit per se a person from serving as a city councilman and at the same time as an employee receiving compensation from a non-profit corporation.

A city councilman, employed by an agency which is closely associated with, and partially funded by the city, should also be aware of those prohibitions established by Section 102.03 of the Revised Code, in general, and Section 102.03 (B) of the Revised Code in particular.

Nothing in this Advisory Opinion should be considered to contravene or contradict the opinions offered by the Attorney General of Ohio on the issue of comparability of public offices.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that a person who serves as an employee of a private corporation, doing business as a public defender agency, within a city-county area does not violate per se the prohibitions of Section 102.04 (B) of the Revised Code by holding the office of councilman-at-large of the city served by the public defender agency.



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(Mrs) Barbara H. Rawson, Chairman

