

OHIO ETHICS COMMISSION

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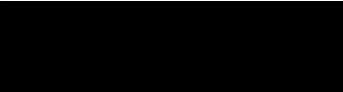
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David E. Freel, *Executive Director*

January 23, 2004

Informal Opinion 2004-INF-0123

The Honorable Bryan C. Williams
Member, Ohio House of Representatives



Dear Representative Williams:

On December 23, 2003, the Ethics Commission received your letter requesting an advisory opinion. You have explained that you are currently a member of the Ohio House of Representatives, and that your term will end in December 2004. You are being considered for employment as the Executive Director of a County Board of Elections. Your question is whether the Ohio Ethics Laws and related statutes prohibit you, if you are hired by the Board of Elections, from completing the rest of this year as a member of the General Assembly.

Brief Answer

As explained below, the question you ask—whether you can serve simultaneously as a member of the Ohio House of Representatives and the Executive Director of a County Board of Elections—is primarily a question of compatibility of public offices. The Ohio Attorney General's Office is the appropriate office to make a determination of whether the positions of member of the House of Representatives and Executive Director of a County Board of Elections are compatible.

Assuming that the Attorney General concludes that the positions of member of the House of Representatives and Executive Director of a County Board of Elections are compatible, the Ethics Law does not prohibit you from being employed as the Executive Director of a County Board of Elections. However, if you become the Executive Director of a County Board of Elections, you will be prohibited from using your authority or influence as Executive Director to benefit yourself or the interests you serve in your capacity as a member of the General Assembly. You would also be prohibited, as Executive Director of the County Board, from representing the County before the General Assembly on any matter in which you personally participated as an employee of the Board.

The Ohio Ethics Law and Related Statutes and Compatibility of Public Positions

Whenever one person desires to occupy more than one public position, the question arises whether the positions are “compatible”—that is, whether a person may simultaneously hold the two public positions. The Attorney General’s Office uses seven criteria to determine “compatibility.” See 1979 Att’y Gen. Op. No. 79-111. An interpretation of the restrictions imposed by the Ethics Law, Chapter 102., and related statutes, Sections 2921.42 and 2921.43 of the Revised Code, is not the same as a determination of compatibility. Ohio Ethics Commission Advisory Opinion No. 91-002. See also 1990 Att’y Gen. Op. No. 90-037. The primary question you ask—whether the positions of member of the House of Representatives and Executive Director of a County Board of Elections are compatible—should be asked of the Ohio Attorney General’s Office.

Assuming that the Attorney General has concluded that two public positions are compatible, the Ethics Law and related statutes generally do not prohibit one person from simultaneously serving in the two public positions. However, the laws do prohibit public officials or employees from participating in matters in which they have a conflict of interest and from misusing the authority or influence of their public position for private gain. When a public official or employee serves in two public positions, the laws restrict the conflicts of interest of the person in the public positions.

Securing Improper Things of Value—R.C. 102.03(D) and (E)

The general conflict of interest prohibitions are set forth in R.C. 102.03(D) and (E):

- (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(D) and (E) to include any person who is elected or appointed to an office of, or employed by, any public agency of the state or a county. R.C. 102.03(B) and (C). As a member of the General Assembly, you are a “public official.” However, the proper agency to interpret the Ethics Law as it applies to you as a member of the General Assembly is the Joint Legislative Ethics Committee (JLEC). The Commission understands that you have already contacted JLEC about this matter, and that JLEC has issued an advisory opinion to you.

If you were to become employed by a County Board of Elections, you would be a "public employee," subject to the Ethics Laws set forth above and subject to the Ethics Commission's jurisdiction. This advisory opinion addresses the application of the Ethics Law to an Executive Director of a County Board of Elections, who also serves as a member of the House of Representatives.

The term "anything of value" is defined for purposes of R.C. 102.03(D) and (E) in R.C. 1.03 to include money and every other thing of value. R.C. 102.01(G). The compensation received by an elective official is a thing of value for purposes of R.C. 102.03(D) and (E). In addition, the economic impact of a decision by a public entity is a thing of value for purposes of R.C. 102.03. Adv. Ops. No. 85-012, 90-002, and 90-012.

R.C. 102.03(D) and (E) prohibit a public official or employee from soliciting, accepting, or using the authority or influence of his public position to secure anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties. The prohibitions imposed by R.C. 102.03(D) and (E) serve the public interest in effective, objective, and impartial government by preventing a situation that may impair the objectivity and independence of judgment of a public official or employee, and, therefore, the effectiveness of the political subdivision with which he serves. Adv. Ops. No. 89-014 and 90-002. The application of R.C. 102.03(D) and (E) is dependent upon the facts and circumstances of each individual situation. Adv. Ops. No. 87-007 and 89-003.

A public official or employee who serves in two public positions is prohibited from using his authority or influence in one position to benefit either himself or the interests he serves in his other capacity. See Adv. Ops. No. 99-002 (a county commissioner who is employed by a county hospital within the same county is required to withdraw from all matters before the commission that affect the hospital) and 91-006 (a city council member who is employed by a school district that includes the city cannot participate in matters before council that affect the district).

R.C. 102.03(D) and (E) would prohibit you, as an employee of a County Board of Elections, from participating in any matter that would involve your own interests. For example, if you were to become a candidate for any elected position, you would be prohibited from using the authority or influence of your position, formally or informally, in any matter that would secure any beneficial decision of the Board of Elections concerning your filing or status as a candidate. Any decision on matters or issues pertaining to your candidacy must be made by the County Board of Elections, which would be your hiring authority and act as a check upon your authority as Executive Director of the Board. Adv. Op. No. 90-010.

Further, R.C. 102.03(D) and (E) would prohibit you from participating, as an employee of the Board of Elections, in any matter before the Board that would involve the interests of the General Assembly, of which you are a member. It is not clear how often, if ever, such matters might arise before a County Board of Elections. However, if any such matter would arise before the County Board during the remaining months of your term as a State Representative, decisions on those matters would have to be made by the County Board of Elections.

Revolving Door Restrictions—R.C. 102.03(A)

Division (A) of Section 102.03 of the Revised Code, the “revolving door” restriction of the Ethics Law, prohibits a public official or employee, during his public service or employment and for one year thereafter, from representing a client, employer, or any person before any public agency on any matter in which he has personally participated as a public official or employee. R.C. 102.03(A) would, therefore, prohibit you, as an employee of the County Board, from representing the County Board before the General Assembly on any matter in which you personally participate as an employee of the County Board. Adv. Op. No. 91-006.

Conclusion

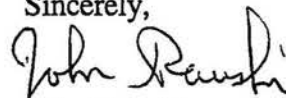
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The Ohio Ethics Commission approved this informal advisory opinion at its meeting on January 23, 2004. The Commission commends you for requesting guidance before taking any actions that could be prohibited by law.

The opinion is based on the facts presented. 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 desire additional information, please feel free to contact this Office again.

Sincerely,



John Rawski
Staff Attorney