



OHIO ETHICS COMMISSION

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Advisory Opinion No.: 80-008

December 1, 1980

Syllabus by the Commission:

Division (A) of Section 102.03 of the Revised Code prohibits a former state employee from representing a private client on a matter in which he personally participated as a state employee, for a period of twelve months after he leaves state service.

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In your request for an Ohio Ethics commission Advisory opinion, you asked whether the Ohio Ethics Law and related statutes would prohibit a former state employee, who is an attorney, from representing a private client before the department by which he had been employed, on a matter on which he had rendered advice as a state employee.

You stated, by way of history, that you are an attorney engage in the private practice of law. Six months ago, you were employed as an attorney for a state department, and in this capacity you prepared a written legal opinion on a particular matter. You have been asked to represent a private client before the department on the same matter.

The pertinent statutory provision is Division (A) of Section 102.03 of the Revised Code, the "revolving door" prohibition of the Ohio Ethics Law. This provision was amended in Am. S.B. 425 of the 113th General Assembly, effective October 20, 1980. Prior to the enactment of Am. S.B. 425, Division (A) of Section 102.03 of the Revised Code prohibited any public official or employee, during his employment or service and for one year thereafter, from representing a client or acting in a representative capacity for any person (defined in Section 1.59 of the Revised Code to include any individual, corporation, partnership, association, or other similar entity) before the public agency with which he served, on any matter with which the person was directly concerned and in which he personally participated by a substantial and material exercise of administrative discretion.

As amended, Division (A) of Section 102.03 of the Revised Code provides:

No present or former public official or employee shall, during his public employment or service or for twelve months thereafter, represent a client or act in a representative capacity for any person on any matter in which he personally participated as a public official or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise or administrative discretion. As used in this division, "matter" includes any case, proceeding, application, determination, issue, or question, but does not include the proposal, consideration, or enactment of statutes, rules, ordinances, resolutions, or charter or constitutional

amendments. As used in this division, "represent" includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person. Nothing contained in this division shall prohibit, during such period, a former public official or employee from being retained or employed to represent, assist, or act in a representative capacity for the public agency by which he was employed or on which he served. This division shall not be construed to prohibit the performance of ministerial functions, including, but not limited to, the filing or amendment of tax returns, applications for permits and licenses, incorporation papers" and other similar documents. (Emphasis on new material added or changed in Am. S.B. 425)

As amended, the "revolving door" provision prohibits any present or former public official or employee, during his employment or service and for one year thereafter, from representing a client or acting in a representative capacity for any person "on any matter in which he personally participated as a public official or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion." (emphasis added) The term "matter" is defined further to include "any case, proceeding, application, determination, issue, or question," but the exemption for legislative matters is retained. The term "represent" is defined as "any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person." Finally, it is specified that this provision should not be construed to prohibit the performance of ministerial functions.

The pertinent elements of Division (A) of Section 102.03 of the Revised Code, as amended, are: 1) a public official or employee; 2) is prohibited from representing a client or acting in a representative capacity for any person; 3) on any matter in which he personally participated as a public official or employee. This prohibition is applicable during government service and for one year thereafter. In the instant case, the person is a former public employee who served within the past year. He would be representing a private client on a matter in which he personally participated while a state employee by rendering a written legal opinion, which, for purposes of this provision, would constitute either a recommendation or the rendering of advice. The "matter" in question was a "case, proceeding, application, determination, issue, or question" before the state department with which he served, and does not fall within the exemption for legislative matters. Finally, the exception for ministerial functions is not applicable in the instant case.

Therefore, Division (A) of Section 102.03 of the Revised Code would prohibit a former state employee, who is an attorney, from representing a private client before the department with which he served on a matter in which he personally participated as a state employee by rendering advice.

The conclusions of this advisory opinion are based on the facts presented. The Commission cautions that its advisory opinions may be relied upon only with respect to questions arising under Chapter 102. and Section 2921.42 of the Revised Code, and do not address possible violations of other laws or rules.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that Division (A) of Section 102.03 of the Revised Code prohibits a former state employee from representing a private client on a matter in which he personally participated as a state employee, for a period of twelve months after he leaves state service.


MEROM BRACHMAN, CHAIRMAN
OHIO ETHICS COMMISSION