



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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Advisory Opinion No. 84-004

March 15, 1984

Syllabus by the Commission:

(1) Division (D) of Section 102.03 of the Revised Code prohibits a city auditor/tax commissioner or his employees from reviewing the tax returns of private clients prepared by him or other members of his private firm.

(2) Division (C) of Section 102.04 of the Revised Code prohibits a city auditor/tax commissioner from receiving compensation from private clients for tax or accounting services provided in a case, proceeding, application, or other matter before any agency of the city, excluding the courts.

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You asked whether the Ohio Ethics Law and related statutes prohibit a city auditor/tax commissioner from engaging in a private business preparing income tax returns or providing accounting services.

Division (D) of Section 102.03 of the Revised Code prohibits a public official or employee from using his official position to secure anything of value for himself that would not ordinarily accrue to him in the performance of his official duties, and that would manifest a substantial and improper influence upon him with respect to those duties. A city auditor/tax commissioner is a "public official or employee" as defined in Division (B) of Section 102.01 of the Revised Code. In Ohio Ethics Commission Advisory Opinion No. 82-001, the Commission held that Division (D) of Section 102.03 of the Revised Code prohibits a city engineer from reviewing work prepared by him or by other members of his private firm. The Commission also held that this provision prohibits city employees under the supervision of the engineer from reviewing his private engineering work. Under the same reasoning, Division (D) of Section 102.03 of the Revised Code prohibits a city auditor/tax commissioner or his employees from reviewing the tax returns of a private client that were prepared by the city auditor/tax commissioner or by other members of his private firm.

Division (C) of Section 102.04 of the Revised Code prohibits a public official or employee from receiving compensation, directly or indirectly, other than from the agency with which he serves, for personal services rendered in a case, proceeding, application, or other matter before any agency of the same entity of government, excluding the courts. In Advisory Opinion No. 82-001, the Commission held that


Division (C) of Section 102.04 of the Revised Code prohibits an individual or firm serving as a city engineer from receiving compensation from private clients for engineering services provided in a matter before the city engineer's office or any other agency of the city. Under the same reasoning, a city auditor/tax commissioner is prohibited from receiving compensation from private clients for tax or accounting services provided by him personally in a case, proceeding, application, or other matter before any agency of the city. However, he would not be prohibited from receiving a share of partnership profits from fees for services rendered by another member of the firm in matters before the city provided he does not review the work.

Division (F) of Section 102.04 of the Revised Code provides that the prohibition does not apply to the performance of ministerial functions, including the filing or amendment of tax returns. Consequently, the city auditor/tax commissioner would not be prohibited from preparing, filing, or amending city tax returns for private clients. Nevertheless, if a case, controversy, or dispute arose with regard to those returns, he would be prohibited from receiving further compensation for any personal services on that matter if it were before an agency of the city, excluding the courts. Also, it may create the appearance of impropriety for him to prepare tax returns to be filed with his office, and as stated above, he and employees are prohibited from reviewing those returns. Therefore, he may wish to refrain from preparing such city tax returns.

It should be noted that the prohibitions described above would not apply to the preparation of federal, state, or county tax returns for private clients. In addition, the city auditor/tax commissioner could prepare tax returns to be filed with other municipalities.

The conclusions of this opinion are based on the facts presented and are limited to Chapter 102. and Section 2921.42 of the Revised Code.

Therefore, it is the conclusion of the Ohio Ethics Commission, and you are so advised, that: (1) Division (D) of Section 102.03 of the Revised Code prohibits a city auditor/tax commissioner or his employees from reviewing the tax returns of private clients prepared by him or other members of his private firm; (2) Division (C) of Section 102.04 of the Revised Code prohibits a city auditor/tax commissioner from receiving compensation from private clients for tax or accounting services provided in a case, proceeding, application, or other matter before any agency of the city, excluding the courts.


Richard D. Jackson, Chairman
OHIO ETHICS COMMISSION