



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
8 EAST LONG STREET, SUITE 210
COLUMBUS, OHIO 43215
(614) 466-7090

Advisory Opinion Number 86-006
May 15, 1986

Syllabus by the Commission:

(1) Division (A) of Section 102.03 of the Revised Code prohibits a former state employee from representing a private client, including his new employer, before any public agency for a period of one year after his departure from state service on any equipment purchase, contract, or other matter in which he personally participated as a public official or employee.

(2) Division (D) of Section 102.03 of the Revised Code prohibits a state employee from recommending, authorizing, or otherwise using his official position to secure an equipment purchase, contract, or other transaction with a private firm with which he is seeking or negotiating private employment.

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You asked whether the Ohio Ethics Law or related statutes would prohibit an electronics technician employed by a state university, who formerly was employed by a state commission as a building maintenance superintendent, from resigning his position to accept employment with a company that sells equipment and parts to his former agencies.

You stated, by way of history, that you are currently employed as an electronics technician with a state university, and that you were employed formerly as a building maintenance superintendent with a state commission. You stated further that you are considering accepting a position with a company that has sold equipment and parts to these agencies. You indicated that the equipment was purchased and in place when you were employed, but that you currently are the initial contact when the company presents improvements or new parts to your agency. In addition, you have been requested by both agencies to make recommendations with regard to the purchase of equipment from the company, but you do not serve on a board or hearing body considering the decision, or otherwise have decision-making authority. You asked whether you would be prohibited from accepting a position with the company as: (1) a program engineer who would design and implement computer programs now used or to be sold to your former agencies; (2) an electronics technician repairing and installing equipment now being used or to be sold to your former agencies; or (3) an outside contract operator of the company equipment owned by your former agencies.

Division (A) of Section 102.03 of the Revised Code provides, in pertinent part:

(A) No public official or employee shall, during his 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

This provision prohibits: (1) a present or former public official or employee; (2) from representing a client or acting in a representative capacity for any person (defined in Section 1.59 of the Revised Code to include an individual, a corporation, a partnership, association, or other similar entity); (3) before any public agency; (4) on any matter in which he personally participated as a public official or employee; (5) during government service and for one year thereafter (See: Ohio Ethics Commission Advisory Opinions No. 80-008, 81-002, 82-002, 84-004, and 86-001). An employee of a state university or a state commission is a "public official or employee" as defined in Division (B) of Section 102.01 of the Revised Code, since he is an employee of a public agency. A former employee of these agencies is not prohibited from selling his general expertise on equipment and parts to a prospective employer. However, he is prohibited for a period of one year after his departure from state service from representing his new employer before the state university, the state commission, or any other public agency on any matter in which he personally participated as a state employee.

Under the facts presented, the state employee is the initial contact with the company on improvements and parts. He also makes recommendations concerning certain equipment purchases and other contracts between his agency and his potential employer. The statute defines personal participation as "decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion." Thus, Division (A) of Section 102.03 of the Revised Code would prohibit him for a period of one year from representing his new employer before the state university, the state commission, or any other public agency on any equipment purchase, contract, or other matter on which he had provided a recommendation or advice. However, it would not prohibit him from representing his new employer on a matter that arose after his resignation (See: Advisory Opinions No. 84-005 and 86-001). This would include new programs, equipment, parts, repairs, or other purchases on which he had not rendered advice or made a recommendation. It also would not prohibit him from being employed by the company if he does not engage in representation, which is defined as "any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person."

It does not appear that merely working on the programs, equipment, or parts would constitute representation for purposes of the statute, particularly if there is not a "case, proceeding, application, determination, issue, or question" before his former agencies. However, certain matters of a sales or contractual nature may arise during the first year following his departure from government service. Thus, he must be careful to refrain from conduct which would constitute representation of his new employer on any sales or contractual matter in which he had personally participated.

In addition, Division (D) of Section 102.03 of the Revised Code provides:

No public official or employee shall use or attempt to use his official position to secure anything of value for himself that would not ordinarily accrue to him in the performance

of his official duties, which thing is of such character as to manifest a substantial and improper influence upon him with respect to those duties.

A promise of future employment is within the definition of "anything of value" in Section 1.03 of the Revised Code. Such a promise of employment would not ordinarily accrue to the state employee in the performance of his official duties, and would be of such character as to manifest a substantial and improper influence on his recommendations concerning equipment or parts. Thus, at such time as the state employee begins seeking or negotiating employment with the company, he must refrain from making recommendations or otherwise using his official position to secure the purchase of equipment, programs, and parts from a potential employer.

This advisory opinion is based on the facts presented, and is limited to questions arising under Chapter 102. and Section 2921.42 of the Revised Code.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that: (1) Division (A) of Section 102.03 of the Revised Code prohibits a former state employee from representing a private client, including his new employer, before any public agency for a period of one year after his departure from state service on any equipment purchase, contract, or other matter in which he personally participated as a public official or employee; and (2) Division (D) of Section 102.03 of the Revised Code prohibits a state employee from recommending, authorizing, or otherwise using his official position to secure an equipment purchase, contract, or other transaction with a private firm with which he is seeking or negotiating private employment.


Merom Brachman, Chairman
Ohio Ethics Commission