



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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Advisory Opinion Number 93-010
May 21, 1993

Syllabus by the Commission:

A member of the Ohio Dietetics Board, who is an attorney in private practice and regularly represents clients on various matters before a state agency other than his own, complies with Division (D) of Section 102.04 of the Revised Code by filing an annual 102.04 (D) Statement disclosing that he will represent clients on multiple matters coming before that state agency during the course of the year.

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In your letter to the Ethics Commission you state that you are an attorney engaged in the private practice of law and have been appointed to the Ohio Dietetics Board. You specialize in employment law and personally represent clients in hundreds of matters each year before the Industrial Commission of Ohio, the Ohio Bureau of Workers' Compensation, and the Ohio Civil Rights Commission. You wish to continue representing clients before these and possibly other state agencies, but you state that you will not represent clients before the Ohio Dietetics Board. You ask about compliance with the disclosure and disqualification requirements imposed by Section 102.04 of the Revised Code on state officers and employees who wish to render personal services in their private capacities on matters pending before state agencies.

R.C. 102.04 (A) prohibits a state officer or employee from receiving, or agreeing to receive, directly or indirectly, compensation, except from the agency with which he serves, for personally rendering any service in any matter before the General Assembly, or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts. See 102.01 (A) (defining the term "compensation" for purposes of R.C. 102.04 as "money, thing of value, or financial benefit").

As a member of the Dietetics Board you receive compensation as fixed by R.C. 124.15 (J) for each day, or portion thereof, that you are actually engaged in the discharge of your official duties and are reimbursed for actual and necessary expenses. See R.C. 4759.03. R.C. 102.04 (A) prohibits you from receiving or agreeing to receive, compensation, other than as provided by R.C. 4759.03, for any service which you render personally on behalf of a client in any case, proceeding, application, or other matter which is before any state agency.

However, Division (D) of Section 102.04 of the Revised Code provides an exception to the prohibition of R.C. 102.04 (A) for state employees and officials who are appointed to a non-elective state office. In order to meet the exception provided by R.C. 102.04 (D) two conditions must be met: (1) the representation provided by the official or employee must be before an agency other than his own; and (2) prior to rendering the personal services the official or

employee must file a 102.04 (D) Statement which describes the personal services to be rendered, a disqualification statement, and other information. See also R.C. 102.04 (E). The official or employee must file the 102.04 (D) Statement with: (1) the Ohio Ethics Commission; (2) his own state agency; and (3) the state agency before which he will be rendering personal services. R.C. 102.04 (D)(2) requires that an official or employee file a 102.04 (D) Statement with the appropriate agencies prior to rendering the personal services.

You are capable of meeting the exception to the prohibition of R.C. 102.04 (A) which is provided by R.C. 102.04 (D), since: (1) you are appointed to a non-elective state office; and (2) the matters for which you will render services on behalf of clients will be pending before state agencies other than your own. Therefore, provided that you comply with the requirements of Divisions (D) and (E) of Section 102.04, you may receive, or agree to receive, compensation from clients for personally rendering services on matters before the Industrial Commission, the Bureau of Workers' Compensation, the Civil Rights Commission and other state agencies other than the Dietetics Board. Under no circumstances may you represent clients before the Dietetics Board.

As stated above, you anticipate that you will personally render services for clients in hundreds of matters each year before the Industrial Commission, the Bureau of Workers' Compensation, and the Civil Rights Commission. You ask if R.C. 102.04 (D) requires you to file a 102.04 (D) Statement for each individual matter pending before these state agencies in which you will render services for a client or whether you could comply with R.C. 102.04 (D) by filing a 102.04 (D) Statement on an annual basis which will collectively encompass all of the matters in which you will render services for clients before the specified state agency during the course of the year.

Division (D) reads in pertinent part:

The required statement shall contain the official's or employee's name and home address, the name and mailing address of the public agencies with which he serves and before which the matter is pending . . . a brief description of the pending matter and of the personal services to be rendered The statement shall also contain the public official's or employee's declaration that he disqualifies himself for a period of two years from any participation as such public official or employee in any matter involving any public official or employee of the agency before which the present matter is pending The two-year period shall run from the date of the most recently filed statement regarding the agency before which the matter was pending No person shall be required to file statements under this division with the same public agency regarding a particular matter more than once in a calendar year. (Emphasis added.)

The use of the word "matter" in Division (D) in the singular form suggests that an official or employee must file a 102.04 (D) Statement for each individual matter for which he provides services. This is also suggested by the fact that no person is required to file more than one 102.04 (D) Statement in a calendar year with the same public agency regarding "a particular matter."

However, under the rules of statutory construction, "[t]he singular includes the plural, and the plural includes the singular." R.C. 1.43 (A). Such construction will be used where it is not out

of context with the language of the statute. See Wingate v. Hordge, 60 Ohio St. 2d 55 (1979). If the word "matter," as used in R.C. 102.04, can be construed in the plural form, then a public official or employee could comply with R.C. 102.04 (D) by filing a statement on an annual basis disclosing that he anticipates rendering services for various clients on multiple matters coming before the specified state agency during the course of the year, rather than a separate statement for each individual matter.

The issue is whether construing the word "matter" in its plural form will give effect to the intent of the General Assembly as expressed through the prohibition of R.C. 102.04 (A). See Ohio State University v. Kinkaid, 48 Ohio St. 3d 78, 80 (1990) (the object of interpreting a statute is to ascertain and give effect to the intent of the General Assembly). The Ohio Supreme Court has explained that statutes "must be construed in light of the mischief they are designed to combat." City of Mentor v. Giordano, 9 Ohio St. 2d 140, 144 (1967). R.C. 102.04 is part of Chapter 102., the Ohio Ethics Law, which establishes a standard of conduct for all public officers and employees within the State and prohibits them from using their official positions to benefit their private interests or the interests of others with whom they hold certain business or personal relationships. Ohio Ethics Commission Advisory Op. No. 93-004. See also Advisory Op. No. 89-014.

In Advisory Opinion No. 74-001, the Ethics Commission explained that the General Assembly intended R.C. 102.04 (A) to prevent abuse by state officials and employees. It is obvious that a state official or employee who provides services for compensation on behalf of clients on matters before state agencies may be able to wield the influence of his state office or employment to the benefit of his clients, and thus himself. As first enacted, R.C. 102.04 (A) achieved the legislative intent of preventing abuse by imposing a stringent limitation upon a state official's or employee's ability to provide services for compensation on matters before state entities. See Advisory Op. No. 75-002. Originally, the only exception to the prohibitions imposed by R.C. 102.04 was for the performance of ministerial functions. See R.C. 102.04 (F). The exception currently provided by Division (D) did not exist.

The current form of R.C. 102.04 includes Division (D) which, as explained above, provides an exception to the prohibition for state employees and state officials who are appointed to a non-elective office and who wish to render services on matters pending before state agencies other than their own. Thus, private activity by a state official or employee on matters before state agencies is restricted, but no longer absolutely prohibited. The legislative intent to prevent abuse is achieved and the public interest is safeguarded by imposing disclosure and disqualification requirements upon state officials and employees. See Advisory Op. No. 92-006.

The disclosure and disqualification requirements which R.C. 102.04 (D) imposes upon a state official or employee are consistent with the legislative intent of R.C. 102.04 (A) of preventing abuse by state officials and employees by requiring them to inform the Ethics Commission, the affected state agencies, and the public that they are representing clients or rendering other personal services on matters before specified state agencies and by prohibiting them from participating in matters affecting officials and employees of the state agencies before which they will render services for compensation. The filing of one 102.04 (D) Statement by an official or employee disclosing his private activity prior to rendering services discloses the official's or employee's proposed activity and subjects the official or employee to the two-year

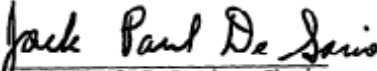
disqualification. Multiple filings of R.C. 102.04 (D) Statements by a public official or employee detailing all of the cases in which he will render services which are pending before the same state agency would be superfluous for purposes of the disclosure and disqualification requirements since disclosure of the official's or employee's presence before the agency is achieved with one filing, and the disqualification relates to any matter involving any official or employee of the state agency and not just to matters which would affect the interests of officials and employees who are making decisions about the matter in which he is rendering his services or who are his clients.

As stated above, you anticipate representing clients on hundreds of matters before the Industrial Commission, the Bureau of Workers' Compensation, and the Civil Rights Commission during your service as a member of the Dietetics Board. An annual filing made with each agency, and copied with the Dietetics Board and Ethics Commission, which collectively encompasses all of the matters before that agency for which you will render services for clients during the year will satisfy the legislative intent of R.C. 102.04 (A) by informing the Ethics Commission, the Dietetics Board, the agency before which the matter is pending, and the public that you are representing clients for compensation before the agency and subjecting you to the disqualification requirement described above. Since R.C. 102.04 (D) does not specify how soon a statement must be filed before the services are rendered but requires only that it must be filed prior to rendering the services, the disqualification provision will begin to run immediately upon filing your annual statement regardless of whether you have personally rendered any services at that time.

Also, it is apparent that, if you were to file a separate statement for each individual matter pending before the same state agency instead of filing an annual statement covering all matters, then the two-year period of disqualification would run from the date of your most recently filed statement. Therefore, in order to comply with the legislative intent of R.C. 102.04 (A), the period of disqualification will end two years from the most recent matter covered by your annual statement in the same manner as if you had filed a separate statement for each individual matter.

This advisory 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.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that a member of the Ohio Dietetics Board, who is an attorney in private practice and regularly represents clients on various matters before a state agency other than his own, complies with Division (D) of Section 102.04 of the Revised Code by filing an annual 102.04 (D) Statement disclosing that he will represent clients on multiple matters coming before that state agency during the course of the year.


Jack Paul DeSario, Chair
Ohio Ethics Commission