



## OHIO ETHICS COMMISSION

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Advisory Opinion No. 76-014

July 29, 1976

(This Advisory Opinion expressly repeals Advisory Opinion No. 75-009 rendered by the Ohio Ethics Commission on June 10, 1975)

Syllabus by the Ohio Ethics Commission:

- 1) A County Library District is a political subdivision.
- 2) A member of a County Public Library District Board is not prohibited by Section 102.04 (B) of the Revised Code from receiving or agreeing to receive, directly or indirectly, compensation, other than from the agency with which he serves, for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter which is before any agency of the county in which the library district is located.

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Your request for an advisory opinion asks whether a member of the Warder Public Library District Board of Clark County is prohibited by Section 102-04 (B) of the Revised Code from receiving compensation for services personally rendered on behalf of clients before the county commissioners of Clark County.

You state, by way of history, that you are a member of the Warder Public Library District Board, appointed to that position by the county commissioners, that you are also a practicing attorney and that your practice involves representation of clients' interests before the county commissioners.

Section 102.04 (B) of the Revised Code states:

"No person who is elected or appointed to an office of or employed by a county, township, municipal corporation, or any other governmental entity, excluding the courts, shall receive or agree to receive directly or indirectly compensation other than from the agency with which he serves for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter which is before any agency, department, board, bureau, commission or other instrumentality, excluding the courts, of the entity of which he is an officer or employee."

The issue is whether you, as a member of the Warder Public Library District for purposes of Section Board have been "appointed to an office of 102.04 (B) of the Revised Code.

Ohio Ethics Commission Advisory Opinion No. 74-007 established the following tests for determining whether a person is appointed to an "office": (1) was he appointed; (2) does he have a title; (3) does he exercise functions of government concerning the public; and (4) is he not subject to a contract of employment. In Advisory Opinion No. 75-004, the Ohio Ethics Commission added a further test -- the exercise of sovereign power.

Ohio Ethics Commission Advisory opinion No. 75-007 applies these five tests to the offices which fall within the purview of Division (B) of Section 102.04 of the Revised Code. It is, therefore, necessary to examine legislation establishing Library District Boards in order to determine whether persons appointed to district library boards are "persons appointed to an office" for purposes of Section 102.04 (B) of the Revised Code. By virtue of Section 3375.22 of the Revised Code, county commissioners may establish Library District Boards:

"In any county in which there has been created a county library district, the free public library of said district shall be under the control and management of a board of library trustees consisting of seven members. Such trustees shall be qualified electors of the library district. Three shall be appointed by the judges of the court of common pleas and four shall be appointed by the board of county commissioners of the county in which said district is situated . . . The members of such board of library trustees shall serve without compensation but shall be reimbursed for their actual and necessary expenses incurred in their performance of their duties. Such board of library trustees shall organize in accordance with section 3375.32 of the Revised Code. Such board of library trustees shall have the control and management of the county district free public library and in the exercise of such control and management shall be governed by section 3375.33 to 3375.41, inclusive, of the Revised Code. . . ."

Therefore, members of Library District Boards, appointed pursuant to Section 3375.22 of the Revised Code, exercise functions of government concerning the public, do not have a contract of employment and have the title of library trustees. They, therefore, would be appointed to an "office" for purposes of Section 102.04 of the Revised Code if they also meet the sovereign power test.

The statutorily imposed duties of Library District Boards obviates the question. The library trustees exercise administrative discretion and have authority in excess of the mere formulation of plans or making recommendations.

Section 3375.40 of the Revised Code lists the following duties of the library trustees:

"Each board of library trustees appointed pursuant to sections 3375.06, 3375.10, 3375.12, 3375.15, 3375.22, and 3375.30 of the Revised Code may:

(A) Hold title to and have the custody of all property both real and personal of the free public library under its jurisdiction;

(B) Expend for library purposes, and in the exercise of the power enumerated in this section, all moneys, whether derived from unclassified property taxes or otherwise,

credited to the free public library under its jurisdiction and generally do all things it deems necessary for the establishment, maintenance, and improvement of the public library under its jurisdiction;

(C) Purchase or lease buildings or parts of buildings and other real property and purchase automobiles and other personal property necessary for the proper maintenance and operation of the free public libraries under its jurisdiction and pay the purchase price therefor in installments or otherwise;

(D) Purchase, lease, lease with an option to purchase, or erect buildings or parts of buildings to be used as main libraries, branch libraries, or library stations pursuant to section 3375.41 of the Revised Code;

(E) Establish and maintain a main library, branches, library stations, and traveling library service within the territorial boundaries of the subdivision or district over which it has jurisdiction of public library service;

(F) Establish and maintain branches, library stations, and traveling library service in any school district, outside the territorial boundaries of the subdivision or district over which it has jurisdiction of free public library service upon application to and approval of the state library board, pursuant to section 3375.05 of the Revised Code; provided the board of trustees of any free public library maintaining branches, stations, or traveling-book service, outside the territorial boundaries of the subdivision or district over which it has jurisdiction of public library service, on September 4, 1947, may continue to maintain and operate such branches, stations, and traveling library service without the approval of the state library board;

(G) Appoint and fix the compensation of all the employees of the free public library under its jurisdiction;

(H) Make and publish rules and regulations for the proper operation and management of the free public library under its jurisdiction;

(I) Establish and maintain a museum in connection with and as an adjunct to the free public library under its jurisdiction;

(J) By the adoption of a resolution accept any bequest, gift, or endowment upon the conditions connected with such bequest, gift, or endowment; provided no such bequest, gift or endowment shall be accepted by such board if the conditions thereof remove any portion of the free public library under its jurisdiction from the control of such board or if such conditions, in any manner, limit the free use of such library or any part thereof by the residents of the counties in which such library is located;

(K) At the end of any fiscal year by a two-thirds vote of its full membership, set aside any unencumbered surplus remaining in the general fund of the library under its jurisdiction for the purpose of creating a special building and repair fund;

(L) Procure and pay all or part of the cost of group life, hospitalization, surgical, or major medical insurance, or a combination of any of the foregoing types of insurance or coverage, whether issued by an insurance company, hospital service association, or nonprofit medical care corporation duly licensed by the state, covering its employees and in case of hospitalization, surgical, and major medical insurance, also covering the dependents and spouses of such employees. with respect to life insurance, coverage for any employee shall not exceed the sum of ten thousand dollars, exclusive of any double indemnity clause which is a part of the policy." (Emphasis added.)

Those duties and responsibilities emphasized in the above quoted section indicate that the duties of members of the Library District Board involve the exercise of sovereign power. Thus, it can be said that they are appointed to "an office" for purposes of Section 102.04 (B) of the Revised Code.

Since the ultimate question is whether a member of a library district board can represent clients before the county commissioners, the next issue becomes whether a library district is a department or agency of the county. Ohio Attorney General Opinion No. 1970, issued in 1950, held that a county library district is an entity separate and distinct from the county itself. The Court, in 60 Ohio L. Abs. 364, 369, (1951), stated that library boards are "separate and distinct entities or bodies politic and corporate, separate and apart from the municipality, the county, the school board, etc. and not agents of said bodies politic." Thus, a library district is not a subdivision of the county or a subordinate department of the county and a member of the library district board is not prohibited by Section 102.04 (B) of the Revised Code from representing a client before the county commissioners.

The final issue is whether a County Library District Board is "any other governmental entity" as that term is used in Section 102.04 (B) of the Revised Code. In Ohio Ethics Commission Advisory Opinion No. 75-021, the Commission stated that "it seems apparent that the State Legislature intended for political subdivisions to come under that section (Section 102.04 (B) of the Revised Code) and that the phrase 'any other governmental entity' should include political subdivisions other than counties, townships, or municipal corporations.

Section 3375.33 of the Revised Code states that:

"The boards of library trustees . . . are bodies politic and corporate, and as such are capable of suing and being sued, contracting, acquiring, holding, possessing, and disposing of real and personal property, and of exercising such other powers and privileges as are conferred upon them by law."

In construing this section and other sections of the Revised Code pertaining to county library district boards, the Ohio Attorney General concluded that such district boards are "political subdivisions." In the opinion, 1953 Ohio Attorney General 2994, the Attorney General held that the County Library District of Hamilton County was a political subdivision and automobiles owned by it were exempt from the Motor Vehicle Financial Responsibility Act which exempted any motor vehicle owned by "the United States, this state, or any political subdivision of this state. . ."

A person who is appointed to a county library district board is a "person who is . . . appointed to an office of . . . a . . . governmental entity" for purposes of Section 102.04 (B) of the Revised Code. As such, a member of that board is only prohibited from receiving or agreeing to receive, directly or indirectly, compensation, other than from the library district board, for any service rendered or to be rendered by him personally in any case, proceeding, application or other matter which is before any agency of the library district.

Therefore, it is the opinion of the Ohio Ethics Commission and you are so advised that a County Library District is a political subdivision; and, that a member of a County Public Library District Board is not prohibited by section 102.04 (B) of the Revised Code from receiving or agreeing to receive, directly or indirectly, compensation other than from the agency with which he serves, for any service rendered or to be rendered by him personally in any case, proceeding, application or other matter which is before any agency, department, board, bureau, commission or other instrumentality of the county in which the library district is located.

  
OHIO ETHICS COMMISSION  
Merom Brachman, Chairman

