



OHIO ETHICS COMMISSION

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Advisory Opinion No. 77-002

February 18, 1977

Syllabus by the Ohio Ethics Commission:

- 1) A county clerk of courts is a "public official or employee" as that term is defined in Section 102.01(B) of the Revised Code.
- 2) A county clerk of courts is under the jurisdiction of the Ohio Ethics Commission for purposes of the Ohio Ethics Law.
- 3) Section 102.03(D) of the Revised Code does not per se prohibit a county clerk of courts from deducting voluntary contributions from his employees' wages for his election campaign fund under Section 3599.031 of the Revised Code.

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In your request for an Ohio Ethics Commission Advisory Opinion, you asked whether the Ohio Ethics Law prohibits a county clerk of courts from deducting-voluntary contributions from his employees' wages for his election campaign fund under the authority of Section 3599.031 of the Revised Code.

The prohibitions of Chapter 102. of the Revised Code, the Ohio Ethics Law, apply generally to "public officials or employees," as that term is defined in Section 102.01(B) of the Revised Code, which provides, in pertinent part:

"Public official or employee' means any person who is elected or appointed to an office or is an employee of any public agency. . . ." (emphasis added)

Since Section 2303.01 of the Revised Code establishes the "office" of clerk of courts for each county and provides for quadrennial election of county clerks of courts, and since the clerk of courts is not within the exceptions specified in Section 102.01(B) of the Revised Code, we conclude that a clerk of courts is a "public official" for purposes of the Ohio Ethics Law. Since the clerk of courts is elected to a statutory office and is a public official, we conclude that the clerk is not an "employee."

Because the clerk of courts is an administrative official of the court, it is necessary as a threshold question to determine which ethics commission has jurisdiction of ethical problems involving the clerk of courts, the Ohio Ethics Commission or the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court. Section 120.01(F) of the Revised Code provides that for purposes of the Ohio Ethics Law, "appropriate ethics commission" means:

"(1) for matters relating to members of the general assembly, employees of the general assembly, and candidates for the office of member of the general assembly, the house or senate legislative ethics committee, depending on the house of which he is a member, by which he is employed, or for which he is a candidate; for employees of the legislative reference bureau and the legislative service commission, the senate legislative ethics committee;

(2) for matters relating to judicial officers and employees, and candidates for judicial office, the board of commissioners on grievances and discipline of the supreme court;

(3) for matters relating to all other persons, the Ohio ethics commission." (emphasis added)

It is therefore necessary to determine whether the county clerk of courts is a "judicial officer" for purposes of Section 102.01(F) of the Revised Code.

Sections 2303.07 to 2303.26 of the Revised Code outline the general duties of the clerk of courts, the ministerial official of the court having charge of the clerical part of its business. The clerk makes and has custody of records, certifies the correctness of transcripts of such records, and files papers, enters judgments, and issues writs and processes. See: 14 O. Jur. 2d, Courts, Section 31; 44 O. Jur. 2d, Public Officers, Section 70. It is well established that clerks of court are court officials whose functions are ministerial and not judicial, and are not considered judicial officers, even though their duties relate to the administration of justice. The term "judicial officer" properly applies only to officers who exercise judicial functions involving the exercise of discretion, such as adjudicating controversies or interpreting laws. Warwick v. State, 25 Ohio St. 21 (1874); State ex rel. Glass v. Chapman, 67 Ohio St. 1 (1902); State ex rel. McKean v. Graves, 91 Ohio St. 23 (1914); 63 Am. Jur. 2d, Public Officers and Employees, Section 26. We conclude that a county clerk of courts is a "public official" and not a "judicial officer or employee," and is, therefore, under the jurisdiction of the Ohio Ethics Commission for purposes of Section 102.01(F) of the Revised Code.

The primary issue for the Ohio Ethics Commission, as the "appropriate ethics commission" in this matter, is whether the Ohio Ethics Law prohibits a county clerk of courts from deducting voluntary contributions from employees' wages and salaries for his election campaign fund under Section 3599.031 of the Revised Code, which provides, in part:

"Notwithstanding any section of the Revised Code, any employer may deduct from the wages and salaries of its employees such amounts for the support of such candidates, political parties, or issues as the employee by written authorization may designate. . . ." (emphasis added)

This provision authorizes certain public officials, including county clerks of courts, to make payroll deductions for the support of a candidate, with the written consent of the employee. We must assume that the members of the General Assembly were aware of the provisions of the Ohio Ethics Law, particularly Section 102.03 of the Revised Code, when they enacted legislation to authorize such a deduction, "notwithstanding any section of the Revised Code." Section

102.03 of the Revised Code, the pertinent provision of the Ethics Law, was enacted as part of Am. Sub. H.B. 55 of the 110th General Assembly, and was in full effect on January 1, 1974. However, Section 3599.031 of the Revised Code was enacted in April 1974, as part of Am. Sub. S.B. 46 of the 110th General Assembly, and was effective on July 23, 1974. Thus, the provisions of the Ethics Law were in full effect when the legislature enacted Section 3599.031 of the Revised Code to authorize such deductions "notwithstanding any section of the Revised Code." However, it should be noted that a recent enactment, Am. Sub. H.B. 784 of the 111th General Assembly, effective December 6, 1976, amended Section 2921.431 of the Revised Code to limit the use of the political campaign deduction by requiring that solicitations "not be made more than twice in any calendar year." We conclude that such deductions by a county clerk of court are authorized under Section 3399.031 of the Revised Code If notwithstanding any section of the Revised Code," and would not per se violate Section 102.03(D) of the Revised Code.

This conclusion is based on the facts presented. However, it may be argued that if employees were coerced to make such contributions, such coercion could amount to the use or attempted use by a public official of his position to secure something of value for himself that would not ordinarily accrue to him, something of such character as to manifest a substantial and improper influence upon him with respect to his duties, in violation of Section 102.03(D) of the Revised Code. In addition, if the funds received through voluntary employee contributions were not used for the public official's future campaigns, and if some direct pecuniary benefit accrued to the public official, this might also amount to the use of an official position to secure something of value in violation of Section 102.03(D) of the Revised Code.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that the Ohio Ethics Law, particularly Section 102.03(D) of the Revised Code, does not, per se, prohibit a county clerk of courts from deducting voluntary contributions from his employees' wages for his election campaign fund under Section 3599.031 of the Revised Code.


OHIO ETHICS COMMISSION
Lindsey Cowen - Chairman

