



OHIO ETHICS COMMISSION
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Advisory Opinion Number 91-009
December 5, 1991

Syllabus by the Commission:

- (1) Division (A) of Section 102.03 of the Revised Code prohibits a former chief deputy administrator for a board of county commissioners, for twelve months from the time he leaves his public position, from representing a client or acting in a representative capacity for any person, before any public agency, on any matter in which he personally participated while he was a public official;
- (2) The prohibition contained in Division (A) of Section 102.03 of the Revised Code does not prohibit the new employer of a former county official from representing a client or acting in a representative capacity for any person on matters in which the former official personally participated during his public service;
- (3) For purposes of Division (A) of Section 102.03 of the Revised Code, a former chief deputy administrator for a board of county commissioners will be deemed to have "personally participated" in a matter if he participated through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion; he will be deemed to have "personally participated" in a matter if he exercised supervision, oversight, or administrative responsibility over other county officials or employees on that specific matter;
- (4) Division (A) of Section 102.03 of the Revised Code does not prohibit a former chief deputy administrator for a board of county commissioners from being engaged, within one year after he leaves his public position, to represent the board of county commissioners on any matter, even on those matters in which he personally participated while he was employed by the board of county commissioners;
- (5) Division (A) of Section 102.03 of the Revised Code prohibits a former chief deputy administrator for a board of county commissioners from representing, within one year after he leaves his public position, the officials or employees of any department, division, institution, board, commission, authority, bureau or other instrumentality of the county, or any other governmental entity, except the board of county commissioners, on any matter in which he personally participated while he was employed by the board of county commissioners;
- (6) Division (A) of Section 102.03 does not prohibit a former chief deputy administrator for a board of county commissioners from representing a client, including a company with which the county does business, on matters that arose after he left county service, on

legislative matters, or on matters in which he did not personally participate while he was employed by the board of county commissioners, even though such representation may be against the county;

(7) Division (A)(3) of Section 2921.42 of the Revised Code prohibits a former chief deputy administrator for a board of county commissioners, for one year after he leaves his public position, from occupying a position of profit in the prosecution of a public contract which he authorized, and which was not let by competitive bidding to the lowest and best bidder.

* * * * *

You have asked several questions about the post-employment restrictions contained in the Ohio Ethics Law. You have stated, by way of history, that you were formerly employed as the chief deputy administrator for a board of county commissioners. You have resigned from that position in order to take a position with a law firm in private practice. In your question, you have asked if you or your law firm may be engaged, as outside counsel, to represent the county commissioners. Additionally, you have asked if you or your law firm may be engaged to represent other elected county officials, county agencies, or other governmental entities. Third, you have asked if you or your law firm may be engaged to represent individuals, such as fired county employees, against the county. Finally, you have asked if you, or your firm, may be engaged to represent agencies with which the county contracts.

Before answering your specific questions, it is helpful to explain the general Revolving Door law. Division (A) of Revised Code Section 102.03 provides, in pertinent part:

No present or former public official or employee shall, during his public 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.

The pertinent elements of this provision are: 1) a present or former public official or employee; 2) is prohibited 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, corporation, 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, 84-005, 86-001, 87-004, and 89-009. The term "public official or employee" is defined, for purposes of Chapter 102., in R.C. 102.01 (B) and (C), to include "any person who is elected or appointed to an office or is an employee" of a board or commission of a county. The chief deputy administrator for the board of county commissioners is a "public official or employee" for purposes of R.C. Chapter 102. See generally Advisory Opinion No. 81-007. Since you formerly served as the chief deputy administrator, you are a "former public official or employee" for purposes of R.C. 102.03 (A).

Accordingly, you are prohibited, for a period of one year after you leave county service, from representing a client, new employer, or any other party before any entity of the county, or any other public agency, on any matter in which you personally participated as the chief deputy administrator, or in any other capacity as a public official or employee. (For purposes of this opinion, the Ethics Commission has assumed that you did not personally participate in matters involving solid, hazardous, or infectious waste matters. A stricter, two-year "Revolving Door" prohibition applies for those former officials and employees who participated in such environmental matters. See Advisory Opinion No. 91-003.)

The term "represent" is defined in R.C. 102.03 (A) to include "any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person." The activities which fall within the term "represent," for purposes of this section, were described by the Ethics Commission in Advisory Opinion No. 86-001:

[T]his would include activities ranging from an appearance on behalf of a private client in a formal proceeding or meeting to informal "lobbying" of agency personnel by telephone or in person. It also includes written communications ranging from formal documents and filings to informal letters and notes. Even if the attorney or consultant does not sign the documents, letters, or notes, the prohibition would apply if she prepared the communication. If she merely consulted with the attorneys or other personnel who prepared the documents, letters, or notes, the prohibition would not apply.

R.C. 102.03 (A) prohibits a former public official or employee from "representing" a person before any public agency on a matter in which he personally participated, and not just before the agency with which he previously served. See Advisory Opinions No. 86-001 and 87-001. A "public agency" is defined in R.C. 102.01 (C) to include "the general assembly, all courts, any department, division, institution, board, commission, authority, bureau or other instrumentality of the state, a county, city, village, township, and the five state retirement systems, or any other governmental entity."

Revised Code Section 102.03 (A) defines the term "matter" to include "any case, proceeding, application, determination, issue, or question, but does not include the proposal, consideration, or enactment of statutes, rules, ordinances, resolutions, or charter or constitutional amendments." It is apparent that the term "matter" is broadly defined under R.C. 102.03 (A) and includes any issue or question as well as particular cases, proceedings, applications, and determinations.

R.C. 102.03 (A) defines "personal participation" to include "decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion."

In Advisory Opinion No. 86-001, the Ethics Commission stated that a former public official or employee will be considered to have "personally participated" in a matter if she "exercised supervision or general oversight" over other personnel in their work on that specific matter. Supervision of a public official's or employee's activities will involve decision-making, approval or disapproval, recommendation or advice, and other exercises of administrative

discretion, by the supervisor, regarding that specific matter. Under these circumstances, even though the supervisor may not be the public official or employee most directly or immediately involved in the matter, he will still be deemed to have "personally participated" in any matter in which he performed oversight, supervision, or administrative responsibilities. You explained that your job duties with the county included supervision of other employees in the commissioners' office and some supervision of the directors of county departments. Therefore, R.C. 102.03 (A) prohibits you from representing clients before any public agency on any matter in which you personally participated, whether you were primarily responsible for the matter, or supervised other county officials or employees on the matter. See Advisory Opinion No. 86-001.

The one-year, post-employment prohibition of R.C. 102.03 (A) does not commence until after you leave public service. See Advisory Opinions No. 81-002, 86-001, 86-006, 87-001, 87-004, and 89-003. Therefore, you are prohibited, for one year from the time you leave county service, from representing a client, your new employer, or anyone else, on a matter in which you personally participated while employed as a public official or employee in any position, regardless of when such personal participation occurred. See Advisory Opinion No. 89-003.

You have asked, in all of your questions, whether the Ohio Ethics Law would prohibit the law firm with which you are now affiliated from representing a client, if you are not involved in the firm's representation, in situations where you might be prohibited by R.C. 102.03 (A) from representing the client because of your former public position. In Advisory Opinion No. 89-009, the Commission addressed the issue whether an insurance company was disqualified from bidding on an insurance contract with a regional transit authority since it employed the former manager of the transit authority. The opinion noted that R.C. 102.03 (A) does not prohibit a company from doing business with or seeking to do business with a public agency which had previously employed one of the company's employees. The opinion goes on to state:

The language used in R.C. 102.03 (A) clearly applies only to a "present or former public official or employee." See Advisory Opinion No. 88-009. R.C. 102.03 (A) does not impose a restriction upon the former public official's or employee's current employer, but rather restricts the actions the former public official or employee may take on behalf of his employer during the twelve-month period following his public employment. Therefore, R.C. 102.03 (A) does not prohibit the insurance company from participating in the bidding process in light of the fact that the company employs the former general manager of the transit authority. (Emphasis in original.)

R.C. 102.03 (A) does not impose a restriction upon the former public official's current employer, but rather restricts the ability of the former public official to represent his new employer, or his employer's clients, during the twelve-month period following his public service. The law firm by which you are employed is not prohibited by R.C. 102.03 (A) from soliciting business from, or representing, the board of county commissioners by which you were formerly employed, other county entities or officials, companies with which the county does business, or other parties, even on matters in which you personally participated. See Advisory Opinion No. 89-009. But see R.C. 2921.42 (A)(3) (discussed below). However, you may not, as a member of the law firm, engage in any activities that would be deemed to constitute "representation" under R.C. 102.03 (A), on any matter in which you personally participated as a public official or

employee. As discussed above, "representation" is defined to include "any formal or informal appearance before, or any written or oral communication with, an public agency on behalf of any person." You would, for example, be prohibited from preparing pleading, filings, or other documents for presentation or submission to a court or other public agency on a matter in which you personally participated as chief deputy administrator for the board of county commissioners, even if you do not sign the pleadings or documents. See Advisory Opinion No. 86-001. However, you would not be prohibited from consulting with the attorneys who represent the client, to merely aide them in their preparation of documents or other matters, so long as you do not divulge confidential information, as discussed below. See Advisory Opinions No. 86-001 and 89-003.

Specifically, you have first asked if you may be engaged to represent the county commissioners as outside counsel. R.C. 102.03 (A) specifically states that "[n]othing contained in this division shall prohibit, during such period, a former public official or employee from being retained or employed to represent, assist, or act in a representative capacity for the public agency by which he was employed or on which he served." You were formerly employed by the board of county commissioners as the chief deputy administrator. Therefore, R.C. 102.03 (A) does not prohibit you, after you leave county service, from being retained to represent the county commissioners. See Advisory Opinion No. 89-009. But see R.C. 102.03 (D) and (E) (prohibiting, as discussed below, a public official or employee from using the authority or influence of his public position to secure business for himself or a prospective employer from the public entity with which the employee is affiliated.) See also Advisory Opinion No. 87-008.

You have also asked if you may solicit business from county elected officials, other than the county commissioners, or from county boards and commissions, and other governmental entities. As stated above, Division (A) of R.C. 102.03 specifically states: "Nothing contained in this division shall prohibit, during such period, a former public official or employee from being retained or employed to represent, assist, or act in a representative capacity for the public agency by which he was employed or on which he served." (Emphasis added.) "Public agency" is defined in R.C. 102.01 (C) as:

[A]ny department, division, institution, board, commission, authority, bureau or other instrumentality of the state, a county, city, village, township, and the five retirement systems, or any other governmental entity. "Public agency" does not include a department, division, institution, board, commission, authority, or other instrumentality of the state or a county, municipal corporation, township, or other governmental entity that functions exclusively for cultural, educational, historical, humanitarian, advisory, or research purposes; does not expend more than ten thousand dollars per calendar year, excluding salaries and wages of employees; and whose members are uncompensated. (Emphasis added.)

In your former public position, you were employed by the board of county commissioners. Accordingly, the exemption of Division (A) of R.C. 102.03 permits you to represent the board of county commissioners, even with regard to matters in which you personally participated while employed by the board of county commissioners. (See discussion above.) However, this exemption does not extend to other county departments, divisions,

institutions, boards, commissions, authorities, bureaus, or instrumentalities, since these county entities are not the "public agency" by which you were employed. Each entity of the county represents a separate "public agency" as defined in R.C. 102.01 (C) for purposes of R.C. 102.03 (A). The exemption to the Revolving Door prohibition applies only to the situation where the former county official or employee is retained or employed by the specific office or entity of the county by which he was previously employed, and does not apply to situations where he is retained to represent an entity of the county he did not serve in his public capacity. A former county official or employee is prohibited from representing a county entity, other than the specific entity or office by which he was previously employed, on any matter in which he personally participated as a county official or employee. He is also subject to this prohibition with regard to representing other governmental entities.

A former public official or employee has presumably developed an expertise and familiarity regarding the functioning and mandate of the specific public agency by which he was employed and may be able to serve the needs of that public agency more efficiently and capably than someone who does not have the same expertise. The policy underlying the exemption within R.C. 102.03 (A) is that it may serve the overall public good for a public agency to be able to avail itself of this expertise developed by a former employee or official during his employment or service with that particular public agency. See generally Advisory Opinion No. 89-009. The policy imperative, however, extends only to the public agency by which the individual was employed, or with which he served. The Ethics Commission has consistently held that the Revolving Door law prohibits a former public official or employee from acting in a representative capacity for a new public employer on a matter in which the public official or employee personally participated. See Advisory Opinions No. 82-002 and 89-003. The prohibition contained in R.C. 102.03 (A) applies regardless of whether the public official's or employee's new employer or client is a public or private entity. See Advisory Opinion No. 89-003.

Therefore, you are prohibited, by R.C. 102.03 (A), from representing county elected officials, county entities other than the board of county commissioners, and other governmental entities before any public agency, on any matter in which you personally participated while you were a public employee. See Advisory Opinions No. 86-001 and 87-001. You would not be prohibited, however, from representing county officials, county entities, and other governmental entities before any public agency, on new matters, legislative matters, or matters in which you did not personally participate as a public official or employee. See Advisory Opinion No. 89-009.

In your third question, you have asked if you may be engaged to represent individuals, such as fired county employees, against the county. As set forth above, R.C. 102.03 (A) prohibits you from representing anyone, including a fired county employee or other client, before any public agency, on a matter in which you personally participated while you were a county employee. See Advisory Opinion No. 81-002. Therefore, if you exercised, as a public employee, any form of administrative discretion, in a matter, you are prohibited from representing a client before any entity of the county, the courts, or any public agency, on that matter in which you personally participated. See Advisory Opinions No. 81-002, 84-005, and 87-001. However, the provisions of R.C. 102.03 (A) would not prohibit you from representing a private client on a new

matter that arose after you left county service, on a legislative matter, or on a matter in which you did not personally participate while you were a public official or employee, even though such representation may be against the county. See Advisory Opinion No. 84-005. But see R.C. 102.03 (B) (prohibiting the disclosure of confidential information, as discussed more fully below).

Finally, you have asked if you may be engaged to represent businesses with which the county contracts. Generally, once again, you are prohibited, by R.C. 102.03 (A), from representing anyone, including companies with which the county contracts, before any public agency, on any matter in which you personally participated while you were a public employee. See Advisory Opinions No. 86-001 and 87-001. However, you would not be prohibited from representing companies with which the county does business, before any public agency, on new matters, legislative matters, or matters in which you did not personally participate as a public official or employee. See Advisory Opinion No. 89-009.

However, with regard to companies with which the county contracts, you should also be aware of the restriction contained in R.C. 2921.42 (A)(3). This section states that a public official may not knowingly:

During his term of office or within one year thereafter, occupy any position of profit in the prosecution of a public contract authorized by him or by a legislative body, commission, or board of which he was a member at the time of authorization, and not let by competitive bidding or let by competitive bidding in which his is not the lowest and best bid.

A "public official" is defined in R.C. 2921.01 (A) to include "any elected or appointed officer, or employee . . . of the state or any political subdivision thereof." A chief deputy county administrator is a "public official" as defined in this section. See generally Advisory Opinion No. 88-003. The term "public contract" is defined in Division (E) of R.C. 2921.42 to mean either of the following:

- (1) The purchase or acquisition, or a contract for the purchase or acquisition of property or services by or for the use of the state or any of its political subdivisions, or any agency or instrumentality of either;
- (2) A contract for the design, construction, alteration, repair, or maintenance of any public property.

A public contract will be deemed to have been "authorized" by a public official, board, or commission if the contract could not have been awarded without the public official's or entity's approval. See Advisory Opinions No. 87-004 and 88-006. If a contract which you authorized or approved exists between the county and any of the parties with whom you or your firm seeks employment or client fees, you would be prohibited from occupying a position of profit in the performance of the contract if it was not let by competitive bidding and was not awarded to the lowest and best bidder. See Advisory Opinion No. 87-008. For example, you would be deemed to profit from a public contract held by an entity or individual that has engaged you or the firm

where: (1) the contract money will be used by the entity or individual to compensate you; (2) you would be providing legal counsel, for compensation, for the company with respect to the contract you authorized (see also R.C. 102.03 (A)); (3) you would receive, or your salary would be based upon, a share of fees paid to another member of your law firm from the contract proceeds or earned by the member for representing the entity with respect to the contract; or (4) you would otherwise profit from the contract. See generally Advisory Opinions No. 87-004, 88-008, and 89-008.

Division (B) of R.C. 102.03 reads:

No present or former public official or employee shall disclose or use, without appropriate authorization, any information acquired by him in the course of his official duties which is confidential because of statutory provisions, or which has been clearly designated to him as confidential when such confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary to the proper conduct of government business.

Pursuant to this section, you are prohibited from disclosing, to your firm, private clients, or any other party, confidential information which you acquired in your position as a public employee and from using such information, without appropriate authorization. See Advisory Opinion No. 89-006. This prohibition has no time limit, and is applicable during your public service, and after. Id.

Although you have already left public service, it should be noted that public officials and employees who are contemplating leaving public service should be aware of the restrictions of R.C. 102.03 (D) and (E) in seeking employment or business from the public agency with which they serve, other public agencies, and other parties who may be doing business or seeking to do business with, interested in matters before, or regulated by their public agency or political subdivision. Divisions (D) and (E) of R.C. 102.03 prohibit a public official or employee from soliciting, accepting, or using the authority of influence of his office to secure anything of value which could manifest a substantial and improper influence upon him with respect to his duties. The term "anything of value" is defined for purposes of R.C. 102.03(D) and (E) to include money and every other thing of value. See R.C. 102.01 (G) and 1.03. The Ethics Commission has stated that "anything of value" includes commissions and fees for legal work. See Advisory Opinions No. 87-006 and 90-008.

Divisions (D) and (E) of Revised Code Section 102.03 prohibit a county official or employee from soliciting, accepting, or using the authority or influence of his office or employment to secure anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties. R.C. 102.03 (D) and (E) would prohibit a public official or employee from soliciting, or using his authority or influence over other public officials or employees or otherwise to secure, employment representing his public employer after he leaves his public position. See Advisory Opinion No. 87-008. See also R.C. 2921.42 (A)(3) (set forth above). Divisions (D) and (E) of Section 102.03 of the Revised Code have also been interpreted as prohibiting a public official or employee from soliciting, or using

his authority or influence to secure, employment with any person or entity that appears before, is regulated by, or is doing or seeking to do business with, his political subdivision unless he withdraws from consideration of any matter involving the person or entity with which he is seeking or from which he has accepted employment. See Advisory Opinions No. 77-003, 82-002, 87-001, 87-004, and 87-006. In addition, the Commission concluded, in Advisory Opinions No. 86-006 and 87-004, that Division (D) of Section 102.03 prohibits a public official or employee from making recommendations to his public agency, using his position to secure anything of value, or otherwise using his official position with regard to any company or firm with which he is seeking or negotiating employment, or from which he has accepted employment.

Your question may also raise issues concerning the professional conduct of attorneys under the Code of Professional Responsibility. These issues are not within the jurisdiction of the Ohio Ethics Commission, but should be referred to the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court.

This advisory opinion is based on the facts presented, and is rendered only with regard to questions arising under Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code.

Therefore, it is the opinion of the Ethics Commission, and you are so advised, that: (1) Division (A) of Section 102.03 of the Revised Code prohibits a former chief deputy administrator for a board of county commissioners, for twelve months from the time he leaves his public position, from representing a client or acting in a representative capacity for any person, before any public agency, on any matter in which he personally participated while he was a public official; (2) The prohibition contained in Division (A) of Section 102.03 of the Revised Code does not prohibit the new employer of a former county official from representing a client or acting in a representative capacity for any person on matters in which the former official personally participated during his public service; (3) For purposes of Division (A) of Section 102.03 of the Revised Code, a former chief deputy administrator for a board of county commissioners will be deemed to have "personally participated" in a matter if he participated through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion; he will be deemed to have "personally participated" in a matter if he exercised supervision, oversight, or administrative responsibility over other county officials or employees on that specific matter; (4) Division (A) of Section 102.03 of the Revised Code does not prohibit a former chief deputy administrator for a board of county commissioners from being engaged, within one year after he leaves his public position, to represent the board of county commissioners on any matter, even on those matters in which he personally participated while he was employed by the board of county commissioners; (5) Division (A) of Section 102.03 of the Revised Code prohibits a former chief deputy administrator for a board of county commissioners from representing, within one year after he leaves his public position, the officials or employees of any department, division, institution, board, commission, authority, bureau or other instrumentality of the county, or any other governmental entity, except the board of county commissioners, on any matter in which he personally participated while he was employed by the board of county commissioners; (6) Division (A) of Section 102.03 does not prohibit a former chief deputy administrator for a board of county commissioners from representing a client, including a company with which the county

does business, on matters that arose after he left county service, on legislative matters, or on matters in which he did not personally participate while he was employed by the board of county commissioners, even though such representation may be against the county; and (7) Division (A)(3) of Section 2921.42 of the Revised Code prohibits a former chief deputy administrator for a board of county commissioners, for one year after he leaves his public position, from occupying a position of profit in the prosecution of a public contract which he authorized, and which was not let by competitive bidding to the lowest and best bidder.



Dr. David L. Warren, Chairman
OHIO ETHICS COMMISSION