



OHIO ETHICS COMMISSION

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Advisory Opinion Number 97-003

December 4, 1997

Syllabus by the Commission:

(1) An employee of a County Library District is a "public official or employee," as that term is used in the Ohio Ethics Law within Division (B) of Section 102.01 of the Revised Code, such that the employee is subject to the prohibitions regarding post-employment conduct, confidentiality, and conflicts of interest contained in Section 102.03;

(2) An employee of a County Library District is an employee of a "governmental entity" such that the employee is subject to the prohibitions which limit compensation for representation contained in Section 102.04 of the Revised Code;

(3) An employee of a County Library District is a "public official," as that term is used in Division (A) of Section 2921.01 of the Revised Code, such that the employee is subject to the prohibitions against having an interest in a public contract contained in Section 2921.42 and the prohibitions which limit supplemental compensation contained in Section 2921.43.

You have asked about the application of the Ohio Ethics Law and related statutes to an employee of a County Library District. In order to answer your question, the Commission must first determine whether an employee of a county library district is subject to the prohibitions of Ohio's Ethics Law and related statutes. You have also asked a specific question that is addressed in a companion opinion. See Ohio Ethics Commission Advisory Opinion No. 97-004.

For the reasons which follow, the Commission has concluded that an employee of a County Library District is subject to the prohibitions regarding post-employment conduct, confidentiality, and conflicts of interest contained in Section 102.03 of the Revised Code. The Commission has also concluded that an employee of a County Library District is subject to the prohibitions which limit compensation for representation contained in Section 102.04. Finally, the Commission has concluded that an employee of a County Library District is subject to the prohibitions against having an interest in a public contract contained in Section 2921.42 and the prohibitions which limit supplemental compensation contained in Section 2921.43.

Ethics Law Restrictions

The first provision within the Ohio Ethics Law that needs to be analyzed is Section 102.03 of the Revised Code. R.C. 102.03, which imposes prohibitions regarding post-employment conduct, confidentiality, and conflicts of interest, states that its prohibitions apply to a "public official or employee." See R.C. 102.03. The term "public official or employee" is defined to include any person who is an employee of an instrumentality of the state, a county, or "any other governmental entity." See R.C. 102.01(B) and (C). A county library district is not an instrumentality of the state. In its Advisory Opinion No. 72-035, the Ohio Attorney General explained that a political subdivision of the state cannot be an instrumentality of the state because a political subdivision is limited to a certain geographical area (such as a county) whereas an instrumentality has state-wide authority. Further, the Commission has previously held that a county library district is an entity "separate and distinct from the county itself." See Adv. Op. No. 76-014.

Therefore, an employee of a county library district will be subject to the prohibitions of R.C. 102.03 if the county library district, a political subdivision, falls under the phrase "any other governmental entity." In Advisory Opinion No. 75-021, the Commission stated that answering this question requires a determination of whether the political subdivision is of the same "kind, class, or nature" as the other entities listed in R.C. 102.01(C)--counties, cities, villages, and townships. If the political subdivision has most or all of the characteristics of these entities, then the political subdivision can be considered similar enough to those entities to be considered "any other governmental entity." See Adv. Op. No. 75-021. County library districts are created by statute (R.C. 3375.19), within a definite geographic area, and are so created to exercise the governmental function of education. See *Brown v. State ex rel. Merland* (1929), 120 Ohio St. 297, 302. These districts have a governing board whose members are appointed by elected officials of the county (R.C. 3375.22), with the powers to possess and dispose of real property, to enter into contracts, and to sue and be sued (R.C. 3375.33). While these districts may lack the power to directly initiate taxes (R.C. 3375.23) or issue bonds (R.C. 3375.24), the Commission has held that an entity need not possess all of the characteristics possessed by the other entities to be classified as the same kind, class, or nature as the other entities. See Adv. Op. No. 75-021. Because a county library district possesses these characteristics, it is similar enough to counties, cities, villages, and townships that it is of the same kind, class, or nature as those entities and is to be considered a "governmental entity" for purposes of R.C. 102.01 (B) and (C). Therefore, an employee of a County Library District is a "public official or employee," as that term is used in Section 102.01(B) of the Revised Code, such that the employee is subject to the prohibitions of Section 102.03.

The next provision within the Ohio Ethics Law that needs to be analyzed is Section 102.04 of the Revised Code. R.C. 102.04 prohibits a public employee from accepting compensation from any source, other than from the governmental entity that employs him, for performing services on matters pending before that governmental entity. See R.C. 102.04(C). The public employees covered by this prohibition are defined to include any person who is an employee of a county, township, municipal corporations (villages and cities), or "any other governmental entity." See R.C. 102.04(C). As explained above, a county library district is similar enough to counties, townships, and municipal corporations that it is of the same kind, class, or nature as those entities and is to be considered a "governmental entity" for purposes of R.C.

102.04(C). Therefore, an employee of a County Library District is subject to the prohibitions of Section 102.04.

Public Contract and Supplemental Compensation Provisions of Law

The other provisions of ethics-related statutes that need to be analyzed are Sections 2921.42 and 2921.43 of the Revised Code. R.C. 2921.42, which provides general prohibitions against having an interest in a public contract, states that its prohibitions apply to any "public official." See R.C. 2921.42(A). R.C. 2921.43, which limits supplemental compensation, states that its prohibitions apply to any "public servant." See R.C. 2921.43(A) and (B). In turn, the term "public servant" is defined to include "[a]ny public official." See R.C. 2921.01(B)(1).

Therefore, an employee of a county library district will be subject to the prohibitions of R.C. 2921.42 and 2921.43 if the employee is a "public official." The term "public official" is defined for purposes of R.C. 2921.42 and 2921.43 to include any employee of a political subdivision. See R.C. 2921.01(A). The Ohio Ethics Commission has previously held that a county library district is a political subdivision. See Adv. Op. No. 76-014; see also Ohio Attorney General Advisory Opinion No. 93-031. Therefore, an employee of a county library district is a "public official," as that term is defined in R.C. 2921.01(A), such that the employee is subject to the prohibitions of both Section 2921.42 and Section 2921.43.

In conclusion, it should be noted that some public officials and employees are required by the Ohio Ethics Law to annually file a financial disclosure statement. See R.C. 102.02. The employees of a county library district, however, are not included within the list of those public officials and employees. See R.C. 102.02(A). Therefore, an employee of a county library district is not required to file a financial disclosure statement with the Ohio Ethics Commission.

This advisory opinion is based on the facts presented. It is limited to questions arising under Chapter 102. and Sections 2921.42, 2921.421, 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: (1) An employee of a County Library District is a "public official or employee," as that term is used in the Ohio Ethics Law within Division (B) of Section 102.01 of the Revised Code, such that the employee is subject to the prohibitions regarding post-employment conduct, confidentiality, and conflicts of interest contained in Section 102.03; (2) An employee of a County Library District is an employee of a "governmental entity" such that the employee is subject to the prohibitions which limit compensation for representation contained in Section 102.04 of the Revised Code; and (3) An employee of a County Library District is a "public official," as that term is used in Division (A) of Section 2921.01 of the Revised Code, such that the employee is subject to the prohibitions against having an interest in a public contract contained in Section 2921.42 and the prohibitions which limit supplemental compensation contained in Section 2921.43.

Sister Mary Andrew Matesich

Sister Mary Andrew Matesich, Chair
Ohio Ethics Commission