



OHIO ETHICS COMMISSION

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Advisory Opinion

No. 74-001

October 4, 1974

Syllabus by the Ohio Ethics Commission:

A lawyer who is a member of a city school district board of education is not in violation of Section 102.04 of the Revised Code when he represents clients before state administrative agencies.

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Your request for an advisory opinion asks whether an attorney who is a member of a board of education of a city school district would violate the new ethics law while serving on that board, if he continues to represent clients before state administrative agencies of any kind.

You state, by way of history, that you were appointed to the board of education of a city school district. You thereafter ran for election and were elected in November, 1973. You are also a practicing attorney and as such you have occasion to represent clients before state administrative agencies.

The question you have directed to the Ohio Ethics Commission falls within the purview of Section 102.04 of the Revised Code which reads as follows:

Sec. 102.04 (A) No person elected or appointed to an office of or employed by the general assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, 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 the general assembly or any department, division, institution, instrumentality, board, commission or bureau of the state, excluding the courts.

(B) 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.

(C) This section shall not be construed to prohibit the performance of ministerial functions including, but not limited to, the filing, or amendment of tax returns, applications for permits and licenses, incorporation papers, and other documents.

Section 102.04 of the Revised Code is thus divided into three divisions. Division (A) comprehends specifically a person elected or appointed to an office of or employed by the general assembly, any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts. That person may not receive or agree to receive directly or indirectly compensation, other than from the agency with which he serves, for any service which he personally renders or will render in any case, proceeding, application, or other matter which is before any agency of the state.

Section 102.04 (B) of the Revised Code prohibits any 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, from receiving or agreeing to receive compensation, other than from the agency with which he serves, for services personally rendered or to be rendered by him in any case, proceeding, application or other matter which is before an instrumentality, excluding the courts, of the governmental entity of which he is an officer or employee.

Division (C) of Section 102.04 of the Revised Code excludes from the general prohibitions of (A) and (B) the performance of ministerial functions.

To determine under which of the above divisions, (A) and (B), you in your position as member of a city school district would fall, it is necessary to examine the structure of the state educational system. The Ohio Constitution, in Section 3 of Article VI, provides for the establishment of a state public school system:

Provision shall be made by law for the organization, administration and control of the public school system of the state supported by public funds: provided, that each school district embraced wholly or in part within any city shall have the power by referendum vote to determine for itself the number of members and the organization of the district board of education, and provision shall be made by law for the exercise of this power by such school districts. (Adopted September 3, 1912.)

Article VI of the Ohio Constitution continues and provides for the establishment of a state board of education in Section 4:

There shall be a state board of education which shall be selected in such manner and for such terms as shall be provided by law. There shall be a superintendent of public instruction, who shall be appointed by the state board of education. The respective powers and duties of the board and of the superintendent shall be prescribed by law. (Amended November 3, 1953.)

Furthermore, it is stated in School District v. School District, 5 Ohio Law Reporter 54 (1907) and Finch v. Board of Education, 30 Ohio St. 37 (1876), a school district is merely a geographic division of territory, devised for the convenience of its inhabitants and organized as an agency of the state in maintaining its public schools.

Thus, there is an educational system of the state which functions in units of city, local, exempted village, county, joint high school and joint vocational school districts, as well as a state board of education. Such a school system would seem to indicate that all the units are state agencies. The result of reaching such a conclusion would be that, as affected by the ethics law, city school board members would fall within the prohibitions of Section 102.04 (A) of the Revised Code.

In rendering advisory opinions pursuant to Section 102.08 of the Revised Code, the Ohio Ethics Commission, like the courts, in the construction of a statute, must be guided by the statute as it exists, in other words, as the Legislature enacted it. The primary and paramount rule in the interpretation or construction of statutes is to ascertain, declare, and give effect to the intention of the Legislature. Since it is to be assumed that the Legislature used the language contained in a statute advisedly and intelligently and expressed its intent by the use of the words found in the statute, the Ohio Ethics Commission does not conclude that city school districts are agencies of the state for purposes of the ethics law.

As noted above, Section 102.04 of the Revised Code was divided into Divisions (A) and (B) by the Legislature along the basis of levels of government. Section 102.04 (A) comprehends the possibility of abuse within the state level. Section 102.04 (B) is directed to abuse which may arise on the level of county government, or within the township or city level, or within any governmental entity. To hold that a city school board member is on the state level as the ethics law pertains to him seems a juxtaposition which departs from Legislature's intention or prohibiting abuse with the same level.

Various cases and statutory language lend support to the theory that a school district should not be considered on the level of the state but rather as a separate governmental entity under Section 102.04 (B) of the Revised Code.

The landmark case in establishing the autonomy of each board of education as an independent unit of government is Cline v. Martin, 94 Ohio St. 420 (1916), which states:

The Constitution of Ohio, as amended September 3, 1912 (Section 3, Article VI), authorizes the general assembly to provide by law for the organization, administration and control by the public school system of the state supported by public funds. This does not require that the school system of the state shall be organized, administered or controlled along the lines or within the territorial limits of the political subdivisions of the state. These may be used as a convenience in the establishment of school districts throughout the state, or they may be totally disregarded, but whether the lines of the political subdivisions are, or are not, coextensive with the school district, the administration and control of schools is not vested in the officers of that political subdivision but in a board of education for each school district. (Emphasis added.)

Although the above language speaks directly to the point of distinguishing a school district from the governmental corporation with which it may share territorial boundaries, it simultaneously implies that school districts and their boards of education are independent and have a separate identity from all other governmental units.

The theory of autonomy of school districts is further enhanced by the fact that a member of the board of education gains authority within its territory by virtue of elections restricted to district boundaries. Section 3313.02 of the Revised Code states, for example, that a member of a city school district is "elected at large by qualified electors of such district."

Elected school board members are vested by statute with the various responsibilities of administering the school system within the territorial boundaries of the district. For example, Section 3313.20 of the Revised Code sets out some of the rulemaking responsibilities of the board of education:

The board of education shall make such rules and regulations as are necessary for its government and the government of its employees, pupils of its schools, and all other persons entering upon its school grounds or premises. Rules and regulations regarding entry of persons other than students, staff, and faculty upon school grounds or premises shall be posted conspicuously at or near the entrance to

such grounds or premises if there are no formal entrances, and at the main entrance to each school building. Any employee may receive compensation and expenses for days on which he is excused by such board for the purpose of attending professional meetings, and the board may provide and pay the salary of a substitute for such days. The expenses thus incurred by an employee shall be paid by the board from the general fund of the school district or the county board fund.

The board of education of each school district is a body politic and corporate having its own rights and responsibilities as pointed out in Section 3313.17 of the Revised Code:

The board of education of each school district shall be a body politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing, and disposing of real and personal property, and taking and holding in trust for the use and benefit of such district, any grant and devise of land and any donation or bequest of money and other personal property.

When a vacancy occurs on a city school board it is not a state agency or officer who names a replacement but the county probate court. That court and not the state board of education or a state officer is charged with the responsibility of performing duties imposed upon a city school board which it fails to perform. Section 3313.85 of the Revised Code sets these requirements:

If the board of education of any city, exempted village, or county school district fails to perform the duties imposed upon it or fails to fill a vacancy in such board within a period of thirty days after such vacancy occurs, the probate court of the county in which such district is located, upon being advised and satisfied of such failure, shall act as such board and perform all duties imposed upon such board.

Opinions of the Attorney General in the area of compatibility of public offices support the theory that local boards of education and school districts are more akin to local governmental entities than to state agencies.

The opinions establish a pattern which indicates school district offices, if incompatible with another office, are generally at odds with other local offices. For example, in 1956 Op. Att'y. Gen. No. 104, a county commissioner's office was held to be incompatible with membership on the board of education of a city school district. However, in 1955 Op. Att'y. Gen. No. 6060, membership on the board of education of a city school district and election to the state general assembly were held not to be incompatible.

Because of the case law and statutory law concerning the autonomy of school districts and their boards of education; the rights, responsibilities and duties statutorily placed on the individual boards of education; the territorial designation of the electors of board of education members; and, the compelling inferences that may be drawn from compatibility rulings of the Attorney General, it is reasonable to conclude that a city school district is not a state agency. Although a city school district may be considered a "state agency" for purposes of other legislation, it is merely a geographical division of territory devised for the convenience of its inhabitants, and as such it would be illogical and in contravention of the obvious legislative intent to consider it a state agency for purposes of implementing the ethics law.

Since you are a member of a board of education of a city school district, you are not a "person who is elected or appointed to an office of or employed by the general assembly or any department, division, institution, instrumentality, board, commission or bureau of the state" referred to in Section 102.04 (A) of the Revised Code. Thus, you are not prohibited from receiving or agreeing to receive directly or indirectly compensation, other than from the agency with which you serve, for any service rendered or to be rendered by you personally in any case, proceeding, application, or other matter which is before the General Assembly or any department, division, institution, instrumentality, board, commission or bureau of the state.

It is the opinion of the Ohio Ethics Commission, and you are so advised, that as a member of the board of education of a city school district you are not prohibited from representing clients before state administrative agencies.

A handwritten signature in cursive script, reading "Barbara H. Rawson", is written over a horizontal line.

OHIO ETHICS COMMISSION

by (Mrs.) Barbara H. Rawson, Chairman