



OHIO ETHICS COMMISSION
150 EAST BROAD STREET
COLUMBUS 43215
(614) 466-7090

Advisory Opinion
No. 74-005
October 22, 1974

Syllabus by the Ohio Ethics Commission:

It is not a violation of Section 102.04 of the Revised Code per se for a person to serve simultaneously as county recorder and, through his membership in a law firm, as legal counsel to a township.

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Your request for an advisory opinion asks whether it is a violation of Section 102.04 of the Revised Code for a person to serve simultaneously in the position of county recorder and through his membership in a law firm, as legal counsel to a township.

You state, by way of history, that you are currently holding the office of county recorder and that your law firm has been retained by the trustees of a township as legal counsel for the calendar year of 1974. As legal counsel for the township, the law firm serves generally in an advisory capacity, attends trustees meetings, and is available to render written and oral opinions on questions of law relating to township government and operations. As a member of the firm, you participate in such functions. You state that all matters involving appearances before the county agencies and courts are referred by the trustees of the township, not to the law firm of which you are a partner, but rather to the county prosecuting attorney as legal counsel for the township under Section 309.09 of the Revised Code.

By way of answer to your question, the Ohio Ethics Commission makes reference to the Ohio Ethics Commission Advisory Opinion No. 74-001 wherein is discussed the general intent of the construction of Section 102.04:

"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 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 . . ."

Section 102.04 (A) comprehends the possibility of abuse within the state level. Section 102.04 (B) is directed to abuse which may arise at the level of county government, or within the township or city level, or within any other governmental entity.

Thus, Section 102.04 of the Revised Code has been interpreted to prohibit the above described activity only within the entity of which one is an officer or by which one is employed. Thus, if a person is an officer of and/or employed by two different governmental entities, the prohibitions apply within both entities. As county recorder, you are an elected official, and as such are prohibited by Division (B) of Section 102.04 of the Revised Code from receiving or agreeing to receive compensation, directly or indirectly, other than from the agency with which you serve -- the county recorders office -- for services rendered by you personally in a case, proceeding, application or other matter which is before any agency of the county.

As legal counsel for a township, your firm is employed by a township, and thus, Division (B) of Section 102.04 of the Revised Code prohibits you from receiving or agreeing to receive compensation, directly or indirectly, other than from the agency of the township with which you serve, for services personally rendered by you in any case, proceeding, application, or other matter which is before any other agency of the township.

Therefore, under the restrictions placed upon you by Division (B) of Section 102.04 of the Revised Code, limitations are placed upon your activities before

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county agencies since you are a county officer, and separately and distinctly, before township agencies, as one employed by a township. However, there is no restriction in Section 102.04 to prevent you from holding those two positions simultaneously.

Since you are only prohibited as to activities within the entity of which you are an officer or by which you are employed, you are prohibited as county recorder from the type of activities described in Division (B) of Section 102.04 of the Revised Code within the county. And, since you are simultaneously employed by the township, through your law firm, you are also prohibited, by virtue of that position, from performing the described type of activity within the entity of the township. You are not however, prohibited by Section 102.04 (B) per se from simultaneously holding those two positions.

It is the opinion of the Ohio Ethics Commission, and you are so advised, that it is not a violation of Section 102.04 of the Revised Code per se for a person to serve simultaneously in the position of county recorder and through his membership in a law firm, as legal counsel to a township.

A handwritten signature in cursive script, reading "Barbara H. Rawson/gz", written in black ink.

OHIO ETHICS COMMISSION

by (Mrs.) Barbara H. Rawson, Chairman