



OHIO ETHICS COMMISSION

150 EAST BROAD STREET

COLUMBUS 43215

(614) 466-7090

Advisory Opinion

No. 74-006

October 22, 1974

Syllabus by the Ohio Ethics Commission:

Section 102.04 of the Revised Code does not prohibit an attorney, who serves as an advisor for a city police department, from representing clients before boards, commissions or agencies of the state of Ohio.

* * * *

Your request for an advisory opinion asks whether Section 102.04 of the Revised Code precludes an attorney who serves in the capacity of advisor to a city police department from representing clients before "The Industrial Commission or other boards" of the state of Ohio.

You state, by way of history, that you serve as advisor to a city police department and that the position is part-time and on a contractual basis.

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:

"(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."

Your attention is also directed to Advisory Opinion No. 74-001, rendered by the Ohio Ethics Commission on September 28, 1974, wherein the above cited section is analyzed. A part of that analysis is as follows:

"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 rendered or to be rendered by him personally 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."

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Thus, in order to be prohibited from receiving compensation for services personally rendered in matters which are before agencies of the state, you must be a person who is elected or appointed to an office of or employed by an agency of the state. Nowhere in your request for an advisory opinion do you indicate that you are such an elected or appointed person, or are employed by an agency of the state, and therefore you are not prohibited from receiving or agreeing to receive compensation for services rendered by you personally in cases, proceedings, applications, or other matters which are before agencies of the state.

The Ohio Ethics Commission found it unnecessary, in rendering this Advisory Opinion, to consider the implication of your alleged status as an independent contractor.

It is the opinion of the Ohio Ethics Commission, and you are so advised, that Section 102.04 of the Revised Code does not prohibit an attorney, who serves as advisor for a city police department, from representing clients before boards, commissions or agencies of the state of Ohio.

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

THE OHIO ETHICS COMMISSION
by (Mrs.) Barbara H. Rawson, Chairman