



OHIO ETHICS COMMISSION

150 EAST BROAD STREET

COLUMBUS 43215

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Advisory Opinion

No. 75-007

June 10, 1975

Syllabus by the Ohio Ethics Commission:

A member of the Cuyahoga County Soldiers and Sailors Monument Commission is not a person who has been appointed to an office of a commission of the state or the county for purposes of Section 102.04 (A) or (B) of the Revised Code, and therefore, is not subject to the prohibitions contained therein.

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Your request for an advisory opinion asks whether a lawyer who is a member and President of the Cuyahoga County Soldiers and Sailors Monument Commission is in violation of Section 102.04 of the Revised Code when he represents clients before state and county administrative boards.

You state, by way of history, that the duties, power and obligations of the Cuyahoga County Soldiers and Sailors Monument Commission are set forth in 91 Ohio Laws 741 (1894) and 95 Ohio Laws 799 (1902). You state that such laws are not codified, and Chapter 345 of the Revised Code has no application to the Monument Commission. You further relate that you were appointed to the Commission in April of 1964 and since have been elected President.

Divisions (A) and (B) of Section 102.04 of the Revised Code place prohibitions on, among others, "persons . . . appointed to an office of" a governmental entity. In Division (A) the state is the pertinent entity; while Division (B) refers to a county, township, municipal corporation or any other governmental entity.

The Ohio Ethics Commission in Advisory Opinion No. 74-007, listed several tests to determine whether a person has been "appointed to an office of the state": (1) was he appointed; (2) does he have a title; (3) does he exercise functions of government concerning the public; and, (4) is he not subject to a contract of employment." In Advisory Opinion No. 75-004 the Ohio Ethics Commission added a further test, the exercise of sovereign power. Sovereign power is "a concept meant to imply the exercise of a duty entrusted to one by virtue of statute or some public authority. Those duties are not merely clerical but involve some discretionary, decision-making qualities." In that Advisory Opinion the Ohio Ethics Commission determined that the duties and responsibilities exercised had to be greater than finding facts, assisting in the formulation of plans and the making of recommendations.

With these tests in mind, it is important to examine the legislation which created the Cuyahoga County Soldiers and Sailors Monument Commission. As stated in your letter of request, the act of creating your Commission is not codified. The Act as reported in 91 Ohio Laws 741 (1894) is:

"Sec. I. Be it enacted by the General Assembly of the State of Ohio, That upon the completion and dedication of the Cuyahoga county soldiers' and sailors' monument, the board of monumental commissioners shall select and appoint a board of five commissioners, to be known and designated as 'the Cuyahoga county soldiers' and sailors' monument commissioners.' Said board shall be union ex-soldiers or sailors of the war of the rebellion, or a member or descendant of members of either of the army organizations known as, the grand army of the republic, union veterans' union, or a member of the first class in good standing of the military order of the loyal legion of the United States, and residents of Cuyahoga county, and shall meet and organize within ten days after their appointment, by the election from their members of a president and secretary, and shall serve without pay. Such board shall be perpetual, and the members thereof, shall have power, and be required within ten days after occurrence, to fill vacancies, by selecting and appointing a Union ex-soldier or sailor of the war of the rebellion, or a descendant of same, residing in Cuyahoga county. The members of such board, and their successors shall take an oath to faithfully perform their duties in caring for the monument, and the grounds surrounding it. Said board shall be empowered to make such rules and regulations for their government, and for the care of the monument and grounds surrounding the same, as in their judgment is required, and shall have the power to employ a suitable Union ex-soldier or sailor of the war of the rebellion, or of the regular army of the United States or descendant of either, as attendant and custodian of such monument and grounds, at a reasonable compensation, to be paid from the general fund of the county, upon a voucher of the president and secretary of the monument commissioners. Such attendant and custodian shall be invested with the ordinary powers and authority of a policeman.

Sec. II. Said monumental commissioners, and the board herein provided for, shall have such control of the grounds of the southeast section of the public square, including the streets, lawns, and sidewalks surrounding the same, as will enable them to properly perform their duties as commissioners, and for no other purpose, and shall have the authority to direct the manner of curbing the streets on the south and east sides of the said southeast section of the square, also, the laying of the crosswalks therein. Such commissioners, or the attendant and custodian of the monument, shall have full authority to remove and restrict express wagons, moving vans, drays, public hacks, street railroad transfer stations, hucksters, wagons, advertising devices, or decorations and all other obstructions for making their stands within the curbing, or in the streets adjoining and contiguous to the curbing around said southeast section of the public square. Any violation of this restriction is hereby declared unlawful, and offenders upon conviction of such violation may be punished as for disorderly conduct.

Sec. III. Said board of monument commissioners are authorized to employ such assistants as may be required to take care of the monument

and grounds, and from time to time, to make necessary repairs and improvements to the monument and grounds, also to provide for electric heating and lighting; payments to be made therefor as is provided for the payment to the attendant and custodian. The city of Cleveland, shall furnish a sufficient supply of water for use in and about the monument, and the grounds surrounding the same free of charge.

Sec. IV. Said board of monument commissioners shall have the authority to place the tools, hose, ladders, and implements required for use in the tool-house used by the park commissioners of the city of Cleveland located in the public square or in the basement of the court house as said board may direct without any cost for storage."

Section I of the above act was amended in 1902 but only to the effect of establishing a ceiling of one thousand dollars per year for supervision, clerical and historical work, 95 Ohio Laws 799 (1902).

Thus, a member of the Cuyahoga County Soldiers and Sailors Monument Commission may fulfill the first four tests applied to determine whether he has been appointed to an office. It can be discerned that (1) he is appointed; (2) he has a title; (3) in a manner, he exercises a function concerning the public; and (4) he is not subject to a contract of employment. It is the question of the exercise of "sovereign power" therefore, which determines the issue.

Certainly the duties performed by a member of the Monument Commission are performed on behalf of the community, however, as regards the ethics law, it would be inaccurate to adjudge them an exercise of "sovereign power." The principle duty of the Commission as set forth above is "caring for the monument and the grounds surrounding the same." To this end the Commission may draft rules and regulations for their internal government, hire a custodian, set his compensation, set restrictions on the use of what is described as the "southeast corner of public square," make repairs and improvements on the monument and the like. These acts are indeed a public service performed by the members of the Commission; however, they are not an exercise of "sovereign power."

Although the above listed tests have only been applied in making determinations as to the persons appointed to an office of the state in Division (A) of Section 102.04 of the Revised Code, the parallel language of Division (B) demands the application of the same test as regards persons appointed to offices of other governmental entities listed there. The results of applying the tests would, likewise, be the same.

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Therefore, it is the opinion of the Ohio Ethics Commission and you are so advised, that a member of the Cuyahoga County Soldiers and Sailors Monument Commission is not a person who has been appointed to an office of a commission of the state or the county for purposes of Section 102.04 (A) or (B) of the Revised Code, and therefore, is not subject to the prohibitions contained therein.


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(Mrs) Barbara H. Rawson, Chairman