



OHIO ETHICS COMMISSION

150 EAST BROAD STREET

COLUMBUS 43215

(614) 466-7090

Advisory Opinion

No. 75-013

July 1, 1975

Syllabus by the Ohio Ethics Commission:

The provisions of Chapter 102 of the Revised Code do not apply to persons who are members of the board of trustees of a non-profit corporation.

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Your request for an advisory opinion asks whether Chapter 102 of the Revised Code applies to a person who serves as chairman of the board of trustees of a private, non-profit corporation operating as a mental health center and primarily funded through a contract with a county mental health and retardation board. You state, by way of history, that the chairman of the board of trustees of that center is also one of five psychiatrists who participates in offering "fee for service" arrangements with the center. You state that the center was incorporated subsequent to an agreement between three hospitals and one clinic and that the center is a "contract agency" of a county mental health and retardation board with the responsibility to serve the residents of the county.

Chapter 340 of the Ohio Revised Code is the enabling legislation for mental health and retardation community service programs. Section 340.01 of the Revised Code provides for the establishment of these programs:

"A community mental health and retardation service district shall be established in any county or combination of counties having a population of at least fifty thousand to provide community services for mentally ill, mentally retarded, and emotionally disturbed persons. . . ."

Section 340.02 of the Revised Code provides for the appointment of a board for each community mental health and mental retardation service program:

"For each community mental health and retardation service district or joint-county district there shall be appointed a mental health and retardation board having not less than nine members, if a single county board, or not less than thirteen members, if a joint-county board, nor more than fifteen members. . . ."

Among the duties of the board set forth in Section 340.03 of the Revised Code is the responsibility for the community mental health and retardation board to:

"(E) Enter into contracts with state hospitals, or other public agencies, and with private or voluntary hospitals and other private or voluntary non-profit agencies for the provision of mental health and retardation service and facilities; . . .

(J) In the event a needed service cannot be provided by an existing public or private agency, directly operate a mental health or mental retardation facility until such time as this responsibility can be assumed by another agency. . . ."

Thus, the Revised Code provides for the establishment of community mental health and retardation service programs, each of which shall have a board, which board, among its duties, may contract with private non-private agencies to provide services, within that community, for mental health programs.

The community mental health center described in your request is a non-profit corporation incorporated under Section 1702.04 of the Revised Code.

The provisions of Chapter 102 of the Revised Code apply to "public officials or employees" and "persons elected or appointed to an office of or employed by" an agency of the state, county, township, municipal corporation or other governmental entity. The governmental or public agencies referred to in Chapter 102 of the Revised Code are entities created by the Constitution or legislative bodies of the state, county, township, or municipal corporation.

Non-profit corporations formed under Section 1702.04 of the Revised Code can be distinguished from these public or governmental agencies in that the non-profit corporations, by virtue of Section 1702.04 of the Revised Code are created by:

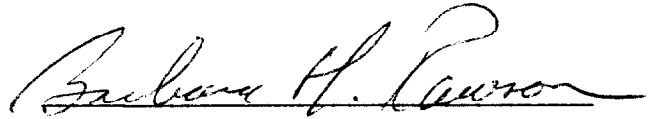
"(A) Any person, singly or jointly with others, and without regard to residence, domicile or state of incorporation, may form a corporation by signing and filing with the secretary of state articles of incorporation, . . . "

Thus, although the activities and functions of a non-profit corporation may be of a public nature, the corporation is not a governmental agency for purposes of Chapter 102 of the Revised Code.

The prohibitions of Chapter 102 of the Revised Code, therefore, do not apply to persons participating through non-profit corporations in services to their community. Thus, a person serving on the board of trustees and also working under a contract with a non-profit corporation is not a public official or employee within the purview of Chapter 102 of the Revised Code.

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Therefore, it is the opinion of the Ohio Ethics Commission and you are so advised, that the provisions of Chapter 102 of the Revised Code do not apply to persons who are members of the board of trustees of a non-profit corporation.

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

OHIO ETHICS COMMISSION

Barbara H. Rawson, Chairman