



OHIO ETHICS COMMISSION

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Advisory Opinion

No. 75-017

August 19, 1975

Syllabus by the Ohio Ethics Commission:

- 1) A member of the Ohio Board of Building Appeals is prohibited by Section 102.04 (A) of the Revised Code from rendering services, for compensation, in regard to offering testimony on proposed Equal Employment Opportunity Rules and Regulations which are the subject of a proceeding, pursuant to the Administrative Procedures Act, Chapter 119 of the Revised Code, which is before the State Equal Employment Opportunity Coordinator, Department of Administrative Services.
- 2) A member of the Ohio Board of Building Appeals is prohibited by Section 102.04 (A) of the Revised Code from receiving compensation for rendering services on an application before the Public Utilities Commission of Ohio unless the rendering of the services are a ministerial function.
- 3) A ministerial function as that term is used in Section 102.04 (C) of the Revised Code is a function which is performed in a prescribed manner in obedience to the mandate of legal authority, without regard to or the exercise of personal judgment upon the propriety of the act being done, and includes but is not limited to the filing of applications for permits and licenses.

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Your request for an advisory opinion asks whether a member of the Ohio Board of Building Appeals, who is an attorney, can participate in two specific situations. The first is filing an application with the Public Utilities Commission of Ohio and the second, is offering testimony on proposed changes in the Equal Employment Opportunity State Construction Contracts and State-Assisted Construction Contracts Rules and Regulations pending before the State Equal Employment Opportunity Coordinator, (hereinafter E.E.O.) Department of Administrative Services. You state, you were appointed as the attorney member of the Ohio Board of Building Appeals in February, 1972 and are engaged in the private practice of law.

The first issue is whether you, as a member of the Ohio Board of Building Appeals, are a person who has been appointed to an "office of . . . any . . . board . . . of the state, . . ." and thus fall within the purview of Section 102.04 (A) of the Revised Code. The Ohio Ethics Commission in Advisory Opinion No. 75-002 states, at page two, "a member of the Board of Building Appeals is a person who is 'appointed to an office of . . . any . . . board . . .

of the state . . . ' for purposes of Section 102.04 (A) of the Revised Code." Section 102.04 (A) of the Revised Code states:

"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."

The next issue, therefore, is whether the act of filing an application with the Public Utilities Commission of Ohio is the type of service for which the receipt of compensation is prohibited under Section 102.04 (A) of the Revised Code.

Section 102.04 (C) of the Revised Code establishes an exception to those types of services for which the receipt of compensation is prohibited by Section 102.04 (A) of the Revised Code.

Section 102.04 (C) of the Revised Code states:

"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."

Thus, the filing of applications for permits and licenses is a ministerial function as established by Section 102.04 (C) of the Revised Code and therefore, not the type of service for which the receipt of compensation is prohibited by Section 102.04 (A) of the Revised Code.

Those services rendered on an application after it has been filed, and which is before the Public Utilities Commission of Ohio, are of the types of services for which the receipt of compensation is prohibited. Ohio Ethics Commission Advisory Opinion No. 75-006 defined the term "before" as:

"The term 'before' as used in Section 102.04 of the Revised Code is defined as 'being considered, judged or decided by' in Websters New World Dictionary. Blacks defines 'before' as 'in the presence of; under the official purview of.' Therefore, a 'matter' which is being considered by, judged by, decided by, in the presence of, or under the official purview of,

is 'before' a governmental entity. The prohibition on receipt of compensation for personally rendering service in a case, proceeding, application or other matter does not apply until the matter is before an agency of a governmental entity."

Thus, once the application for a permit or license is filed it is being considered by, judged by, decided by, in the presence of, and within the official purview of the Public Utilities Commission of Ohio and therefore is an "application . . . before" as that phrase was defined in Ohio Ethics Commission Advisory Opinion No. 75-006. Therefore, the receipt of compensation for services rendered after the application for a permit or license is filed is prohibited by Section 102.04 (A) of the Revised Code. Except, such services as are ministerial in nature are within the exception established in Section 102.04 (C) of the Revised Code.

"Ministerial functions" as defined in Trauger v. Nash, 66 Ohio St. 612 (1902), are, those functions which are performed in a prescribed manner in obedience to the mandate of legal authority, without regard to or the exercise of personal judgment upon the propriety of the act being done.

Therefore, although the filing of the application for a permit or license is not within the purview of Section 102.04 (A) of the Revised Code, the receipt of compensation for those services rendered after the application is filed and is before the Public Utilities Commission of Ohio is prohibited by Section 102.04 (A) of the Revised Code except as they are ministerial in nature.

The next issue is whether the receipt of compensation for rendering services in the form of preparing and delivering testimony with regard to proposed E.E.O. State Construction Contracts and State-Assisted Construction Contracts Rules and Regulations is within the purview of Section 102.04 (A) of the Revised Code.

E.E.O. State Construction Contracts and State-Assisted Construction Contracts Rules and Regulations are promulgated under the procedures established by the Administrative Procedures Act, Chapter 119 of the Revised Code, and pursuant to the Executive Order of January 27, 1972, Equal Employment Opportunity on State Construction Contracts and State-Assisted Construction Contracts. Chapter 119 proceedings require reasonable public notice of the hearing; the filing of the text of the proposed rule or amendment with the Secretary of State; a public hearing at which any person affected by the proposed action may testify; and only after these actions may the rule or amendment be adopted. Thus, Chapter 119 proceedings are proceedings which are quasi-judicial in nature and, therefore, within the purview of Section 102.04 (A) of the Revised Code. Thus, the receipt of compensation for rendering services in a Chapter 119 proceeding "before" the E.E.O. Coordinator would be prohibited by Section 102.04 (A) of the Revised Code.

The Chapter 119 proceeding is "before" the E.E.O. Coordinator as the testimony collected through the proceeding is being considered by and the proposed changes in the Rules and Regulations are under the official purview of the Coordinator.

The ministerial exception established in Section 102.04 (C) of the Revised Code does not apply since the service rendered, for compensation by an attorney in preparing and delivering testimony as to proposed changes of Rules and Regulations is not ministerial in nature. Such service is not rendered in a prescribed manner and without regard to exercise of the attorney's judgment.

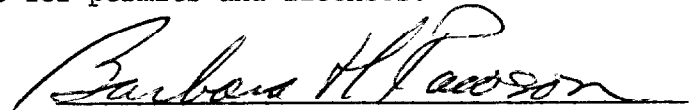
Thus, the service rendered, for compensation in a Chapter 119 proceeding is not within the ministerial exception provided in Section 102.04 (C) of the Revised Code.

Thus, services rendered in the preparation and delivery of testimony to the State E.E.O. Coordinator through a Chapter 119 proceeding is service rendered in a proceeding before a state department. Therefore, a member of the Board of Building Appeals is prohibited from receiving compensation for rendering such services.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised that a member of the Ohio Board of Building Appeals is prohibited by Section 102.04 (A) of the Revised Code from rendering services, for compensation, in regard to offering testimony on proposed Equal Employment Opportunity Rules and Regulations which are the subject of a proceeding, pursuant to the Administrative Procedures Act, Chapter 119 of the Revised Code, which is before the State Equal Employment Opportunity Coordinator, Department of Administrative Services.

A member of the Ohio Board of Building Appeals is prohibited by Section 102.04 (A) of the Revised Code from receiving compensation for rendering services on an application before the Public Utilities Commission of Ohio unless the rendering of the services are a ministerial function.

A ministerial function as that term is used in Section 102.04 (C) of the Revised Code is a function which is performed in a prescribed manner in obedience to the mandate of legal authority, without regard to or the exercise of personal judgment upon the propriety of the act being done, and includes but is not limited to the filing of applications for permits and licenses.



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(Mrs) Barbara H. Rawson, Chairman