



OHIO ETHICS COMMISSION

150 EAST BROAD STREET

COLUMBUS 43215

(614) 466-7090

Advisory Opinion

No. 75-018

August 19, 1975

Syllabus by the Ohio Ethics Commission:

A county commissioner, who is also an attorney, is not prohibited, by Section 102.04 (B) of the Revised Code, from receiving compensation for services rendered by him personally in matters which are before the courts.

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Your request for an advisory opinion asks whether a county commissioner, who is also an attorney, violates Chapter 102 of the Revised Code if he serves as counsel for the defendant in a matter before the juvenile court or in other criminal matters before a municipal court within the county in which he serves as commissioner. You state you were elected, in November, 1974, to the position of county commissioner, that you practice law within that county, and were recently appointed as counsel for a defendant in the juvenile court in the county. You state also that you expect to be retained as counsel in a criminal matter being investigated by the sheriff's department of your county and prosecuted by the prosecutor's office of your county. You state further that you have appeared on behalf of defendants in criminal cases in municipal court and in the juvenile court of the county. This representation also involved negotiations prior to entering a plea of guilty in the cases. You state that as a county commissioner your office is responsible for the funding of the prosecutor's office, the sheriff's department, the juvenile court, county court, and the court of common pleas.

County commissioners are elected in a popular election as provided for in Section 305.01 of the Revised Code:

"The board of county commissioners shall consist of three persons who shall be elected as follows:

- (A) In November, 1974, and quadrennially thereafter, one county commissioner shall be elected to take office on the first day of January following. . . . "

A person who is elected to an office of a county, falls within the purview of Section 102.04 (B) of the Revised Code:

"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." (Emphasis added)

Thus, a county commissioner is prohibited from receiving compensation for rendering certain services personally. However, receipt of compensation for performing a service in a matter which is before the courts is within the exclusion contained in Division (B) of Section 102.04 and thus the receipt of compensation for such services is permitted. The limitation, therefore, does not extend to compensation received for performing services in cases, proceedings, applications or matters which are before the courts. It is necessary, therefore, to establish whether a matter is "before the courts" in order to determine whether the exclusion applies. "Before" has been defined in Ohio Ethics Commission Advisory Opinion No. 75-006, at page seven, as:

" . . . being considered by, judged by, decided by, in the presence of, or under the official purview of . . . "

Thus, a matter which is being considered by, judged by, decided by, in the presence of, or under the official purview of the courts is a matter for which the receipt of compensation for services is not prohibited. For example, an investigation by the county prosecutor's office in which charges have not been filed against a party would not be a matter before the courts, since the matter is not yet being considered by, judged by, decided by, is not in the presence of, nor under the official purview of the courts. Thus, if services are rendered in a matter which is not before the courts, an elected county official is prohibited from receiving compensation for those services if the matter is before any agency of the county of which he is an official. However, if the matter is before the court, the exclusion contained in Division (B) of Section 102.04 of the Revised Code permits the receipt of compensation for services rendered in the matter.

Thus, if charges have been filed in the juvenile court of the county and the court has appointed counsel for the defendant, the matter is clearly before the court. If a matter is being investigated by the county sheriff's office and charges have not been filed, the exclusion does not apply. Therefore, a county commissioner who is an attorney may represent persons in a criminal case which is "before the courts."

Other sections of Chapter 102 of the Revised Code apply to public officials and employees. Section 102.01 (B) of the Revised Code defines "public official or employee" as:

"(B) . . . any person who is elected or appointed to an elective office or employed by any public agency. . . . "

Advisory Opinion No. 75-018

page three

As a person elected to an office, a county commissioner is a "public official." As such the Ohio Ethics Commission directs your attention to Divisions (B), (C), and (D) of Section 102.03 of the Revised Code which place restrictions on the activities of county commissioners.

A review of a special set of facts, not available here, would be required before the Commission could render an opinion regarding the application of Section 102.03 of the Revised Code.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised that a county commissioner, who is also an attorney, is not prohibited by Section 102.04 (B) of the Revised Code from receiving compensation for services rendered by him personally on matters which are before the courts.



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(Mrs) Barbara H. Rawson, Chairman