



OHIO ETHICS COMMISSION

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Advisory Opinion

No. 75-020

August 19, 1975

Syllabus by the Ohio Ethics Commission:

- 1) A local school district is a "governmental entity" as that term is used in Section 102.04 (B) of the Revised Code.
- 2) A member of a board of education of a local school district who is an attorney is not in violation of Section 102.04 (B) of the Revised Code when he renders services for compensation on matters before county and township administrative agencies.

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Your request for an advisory opinion asks whether a member of a board of education of a local school district who is an attorney would violate Section 102.04 of the Revised Code while serving on that board, if he continues to represent clients before county and township administrative agencies.

You state you were elected to a board of education of a local school district in November, 1969 and re-elected in November, 1973. You are also a practicing attorney and as such you have occasion to represent clients before county and township administrative agencies, principally on zoning matters.

As determined by Ohio Ethics Commission in Advisory Opinion No. 74-001, a member of a board of education 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."

It is well established in Ohio case law and Attorney General's Opinions that, as stated in Schwing v. McClure, 120 Ohio St. 335 (1929) at page 340, "A member of a school board, while he is not a township, county, or city officer, is a public officer." Thus, members of school boards do not fall within the purview of Section 102.04 (B) of the Revised Code by virtue of being a "person elected . . . to an office of . . . a county, township, [or] municipal corporation

. . . " It must, therefore, be determined whether a member of a board of education of a local school district is for purposes of, Section 102.04 (B) of the Revised Code, a "person elected . . . to an office of . . . any other governmental entity."

The term "other governmental entity" as used in Section 102.04 (B) of the Revised Code is one to which the rule of ejusdem generis must be applied. In discussing the rule of ejusdem generis, 50 O. Jur. 2d, Statutes, Section 220, states "where, in a statute, general words follow a designation of particular subjects or classes of persons, the meaning of the general words will ordinarily be construed as restricted by the particular designation and as including only things or persons of the same kind, class, or nature of those specifically enumerated unless there is a clear manifestation to the contrary purpose." Thus the rule of ejusdem generis requires that the term "other governmental entity" be interpreted to include only subjects of the same kind. The Ohio case of Rutherford v. Cincinnati & P. R. Company, 35 Ohio St. 559 (1880) establishes this rule of construction in Ohio.

Applying the rule of ejusdem generis to the term "other governmental entity" it becomes necessary to determine what entities are of the same kind, class or nature as those specifically enumerated -- county, township, or municipal corporation in Section 102.04 (B) of the Revised Code.

To make this determination a list of those common characteristics possessed by counties, townships and municipal corporations has been compiled. The possession of most or all of these characteristics would tend to make another entity "of the same kind, class or nature" as a county, township or municipal corporation and thus an "other governmental entity" for purposes of Section 102.04 (B) of the Revised Code.

The characteristics which will be considered as determinative of whether an entity is an "other governmental entity" for purposes of Section 102.04 (B) of the Revised Code are:

1. Was the entity established by statute,
2. to exercise a governmental function,
3. within a definite geographical area,
4. with the establishment of a governing board or body elected by the electors of the defined geographical area or appointed by elected officials of the geographical area,
5. with the power to initiate taxes or assess property,
6. issue bonds,
7. possess and transfer real property in its own name,
8. contract and,
9. sue or be sued in its own name.

To be considered an "other governmental entity" the entity being examined need not meet all of the tests established but only enough of the tests

that in a balancing situation that entity is shown to be "of the same kind, class or nature" as counties, townships and municipal corporations.

In applying these tests to boards of education of local school districts it is necessary to examine those statutes creating and establishing boards of education.

Section 3311.03 of the Revised Code establishes local school districts. Section 3313.47 of the Revised Code vests school boards with the management and control of schools, which is a function of government. The boundaries of a local school district are definite and shall be established in a proposal submitted to the electorate under the provisions of Sections 3311.26 or 3311.37 of the Revised Code.

Section 3313.01 of the Revised Code provides that the board of education shall consist of five members elected by the electors residing in the territory composing the district.

Section 3313.17 of the Revised Code provides:

"The board of education of each school district shall be a body politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing, and disposing of real and personal property, and taking and holding in trust for the use and benefit of such district, any grant or devise of land and any donation or bequest of money or other personal property."

Section 3315.02 of the Revised Code states:

"The board of education of every district shall provide by a tax levy for the payment of the annual interest on its bonded indebtedness, for the payment of its serial bonds as they mature, and for a sinking fund for the extinguishment of its other bonded indebtedness . . . "

School boards have bonding authority under the authority of Chapter 133 of the Revised Code as do municipal corporations, counties, and townships.

Reviewing the above statutes school boards clearly possess all nine of the determinative characteristics listed above, therefore boards of education of a local school district are "of the same kind, class or nature" as counties, townships, and municipal corporations. Thus, a board of education of a local school district is an "other governmental entity" for purposes of Section 102.04 (B) of the Revised Code.

A member of a board of education of a local school district, as a "person elected . . . to an office of . . . any other governmental entity," is

prohibited by Section 102.04 (B) of the Revised Code from receiving, 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 -- the local school district. Conversely, a member of a board of education of a local school district is not a "person who is elected to . . . an office of . . . a county, township [or] municipal corporation" for purposes of Section 102.04 (B) of the Revised Code and therefore is not prohibited from receiving or agreeing to receive compensation, directly or indirectly, for services rendered or to be rendered personally in any case, proceeding, application, or other matter which is before an administrative agency of a county, township or municipal corporation.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised that a local school district is a "governmental entity" as that term is used in Section 102.04 (B) of the Revised Code; and, that a member of a board of education of a local school district who is an attorney is not in violation of Section 102.04 (B) of the Revised Code when he renders services for compensation on matters before county and township administrative agencies.


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(Mrs) Barbara H. Rawson, Chairman