



OHIO ETHICS COMMISSION

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Advisory Opinion

No. 75-025

September 8, 1975

Syllabus by the Ohio Ethics Commission:

- 1) A member of the Ohio Student Loan Commission is a person appointed to an office of a commission of the State and within the purview of Section 102.04 (A) of the Revised Code.
- 2) A member of the Ohio Student Loan Commission is not prohibited by Section 102.04 of the Revised Code, from receiving compensation for services rendered by him personally in any case, proceeding, application or other matter which is before any agency of a county, township or municipal corporation.
- 3) A member of the Ohio Student Loan Commission, who is a lawyer, does not violate per se Section 102.04 (A) of the Revised Code when he receives a partnership distributive share of fees, even though some of those fees are for services rendered by his partners in matters which are before state agencies.

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Your request for an advisory opinion poses two questions. The first is whether Section 102.04 of the Revised Code prohibits a member of the Ohio Student Loan Commission, who is a lawyer, from receiving or agreeing to receive compensation for personally representing clients' interests before "local zoning authorities." The second question is whether Section 102.04 of the Revised Code prohibits a member of the Ohio Student Loan Commission from receiving a partnership share of revenue from his law firm when his partners and associates represent clients' interests before other state agencies.

It is necessary to determine whether you, as a member of the Ohio Student Loan Commission, have been appointed to an office of a commission of the state and consequently within the purview of Section 102.04 (A) of the Revised Code.

Section 102.04 (A) of the Revised Code provides:

"No person . . . appointed to an office of . . . any . . . commission . . . of the state 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 Ohio Ethics Commission in Advisory Opinion No. 75-004, used several tests to determine whether a person has been appointed to an "office" for purposes of Section 102.04 (A) of the Revised Code: (1) was he appointed; (2) does he have a title; (3) does he exercise functions of government concerning the public; (4) is he not subject to a contract of employment; and, (5) does he exercise 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." That Advisory Opinion held that finding facts, assisting in the formulation of plans and the making of recommendations was not an exercise of sovereign power.

Section 3351.05 of the Revised Code creates the Ohio Student Loan Commission:

"There is hereby created the 'Ohio student loan commission.' The purpose of such commission is to make available to residents of this state improved opportunities for education and to improve the general health and welfare by raising the educational levels of such residents by guaranteeing loans made to persons who are attending or plan to attend eligible institutions of education, when such loans are made to assist such persons in meeting their expenses of education in accordance with sections 3351.05 to 3351.14 of the Revised Code. . . . "

Section 3351.06 of the Revised Code sets forth the membership and organization of the Commission:

"The Ohio student loan commission shall be composed of nine members, to be appointed by the governor with the advice and consent of the senate. Two members of the commission shall be representatives of institutions of higher education, one member shall be a representative of secondary schools, and three members shall be representatives of approved lenders. . . . "

Members of the commission shall receive no compensation for their services but shall be reimbursed for their necessary expenses actually incurred in the conduct of the business of the commission.

The commission shall provide for the holding of regular and special meetings. A majority of the commissioners shall constitute a quorum for the transaction of any business and the approval of a quorum is necessary to undertake any act of the commission.

The commission shall adopt rules for the conduct of the commission and may appoint such officers and employees as necessary and may fix their compensation and prescribe their duties."

From the quoted statutes it is clear a member of the Ohio Student Loan Commission: 1) is appointed; 2) has the title of member of the Ohio Student Loan Commission; 3) exercises a function of government concerning the public; and, 4) is not subject to a contract of employment.

Section 3351.07 of the Revised Code sets forth the powers and duties of the Commission:

"(A) The Ohio student loan commission may:

(1) Guarantee the loan of money, subject to section 3351.08 of the Revised Code, and upon such other terms and conditions as the commission may prescribe, to persons attending or planning to attend eligible institutions to assist them in meeting their educational expenses; . . .

(3) Enter into contracts as may be desirable with eligible educational institutions, upon such terms as may be agreed upon between the commission and the institution, to provide for the administration by such institution of any loan or loan plan guaranteed by the commission, including applications therefor and repayment thereof; . . .

(5) Sue and be sued in the name of the commission; . . .

(8) Perform such other acts as may be necessary or appropriate to carry out effectively the objects and purposes of the commission.

(B) The Ohio student loan commission for the purposes of sections 3351.05 to 3351.14 of the Revised Code, shall:

(1) Prescribe the academic status required to obtain guarantee of a loan;

(2) Approve eligible institutions in which students must be enrolled or accepted for enrollment in order to be eligible for guaranteeing loans. . . ." (Emphasis added)

Thus, the members of the Ohio Student Loan Commission, as provided in Section 3351.07 of the Revised Code, exercise powers which are beyond the type that could be described as, the formulation of plans and making of recommendations, and which involve discretionary, decision-making qualities, such as, guaranteeing loans, acquiring, holding and disposing of real and personal property, entering into contracts with educational institutions and lenders to provide for loans, and collecting loans guaranteed by the Commission. Therefore, the Ohio Student Loan Commission exercises sovereign power and a member of the

Commission meets all of the above described tests and is appointed to an office of a commission of the state for purposes of Section 102.04 (A) of the Revised Code. As such the receipt, directly or indirectly, of compensation for personally rendering services 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 is limited.

For an explanation of the limits imposed by Section 102.04 (A) of the Revised Code, see Ohio Ethics Commission Advisory Opinion No. 75-006 which defines the terms "case," "proceeding," "application" or "other matter" as used in Section 102.04 (A) of the Revised Code and the extent of the exception in Section 102.04 (C) of the Revised Code.

The second question, whether Section 102.04 (A) of the Revised Code prohibits a member of the Ohio Student Loan Commission from receiving a partnership share of revenue derived, in part, from partners and associates rendering services for private clients in cases, proceedings, applications, or other matters which are before the general assembly or any other agency of the state, excluding the courts, is discussed in Advisory Opinion No. 74-009. Although that Advisory Opinion was based on Section 102.04 (B) of the Revised Code, the appropriate language of Section 102.04 (A) of the Revised Code, "No person . . . 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 . . ." is identical. That Advisory Opinion discusses the applicability of prohibitions to the law partners of a municipal official, and states in the syllabus:

"A member of a municipal planning commission is not in violation of Section 102.04 (B) of the Revised Code when he receives a partnership distributive share of fees for services rendered by a partner 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, the member, is an officer."

Therefore, the prohibitions of Section 102.04 (A) of the Revised Code apply to you personally and do not by virtue of your membership on the Commission, apply to your partners. Nor do the prohibitions of Section 102.04 (A) of the Revised Code prohibit the receipt of a partnership share of fees for services rendered by a partner in a case, proceeding, application, or other matter which is before any agency, department, board, bureau, commission or other instrumentality of the state. Although the prohibitions of Section 102.04 (A) of the Revised Code apply to compensation received "directly or indirectly" by a member of the Ohio Student Loan Commission the prohibition against the receipt of compensation applies only where the services are performed "personally" by the member of the Commission.

A person who falls within the purview of Section 102.04 (A) of the Revised Code is prohibited from receiving compensation for performing services personally in matters which are before agencies of the state. This prohibition applies when the "matter" is before a state agency, not merely when the person, covered by the law, is before the agency. A person covered by this law, therefore would also be prohibited from receiving compensation for services rendered by him personally in a matter which is before a state agency, even if the service he renders is performed within the confines of his law office. The prohibition against receipt of compensation would include receipt of a partnership distributive share of fees since Section 102.01 (A) of the Revised Code defines "compensation" to mean "money, thing of value, or financial benefit."

However, the prohibitions of Section 102.04 (A) of the Revised Code do not prohibit a lawyer, who holds an office of a commission of the state, from sharing in fees generated by his law partners who represent clients before various state agencies. The Ohio Ethics Commission does not express an opinion in this instance and at this time on whether consultation among persons in the law firm constitutes "services rendered personally" within the meaning of Section 102.04 (A) of the Revised Code. The Commission recognizes that each instance of this type must be carefully evaluated as to the situation involved, in order to determine whether a violation of Section 102.04 (A) of the Revised Code has occurred.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised that: a member of the Ohio Student Loan Commission is a person appointed to an office of a commission of the State and within the purview of Section 102.04 (A) of the Revised Code; a member of the Ohio Student Loan Commission, is not prohibited by Section 102.04 of the Revised Code, from receiving compensation for services rendered by him personally in any case, proceeding, application or other matter which is before any agency of a county, township, or municipal corporation; and, a member of the Ohio Student Loan Commission, who is a lawyer, does not violate per se Section 102.04 (A) of the Revised Code when he receives a partnership distributive share of fees, even though some of those fees are for services rendered by his partners in matters which are before state agencies.


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by (Mrs) Barbara H. Rawson, Chairman