



OHIO ETHICS COMMISSION

150 EAST BROAD STREET

COLUMBUS 43215

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Advisory Opinion
No. 75-033
December 17, 1975

Syllabus by the Ohio Ethics Commission:

A city building inspector who is an employee of a city, is not prohibited per se, by Section 102.04 (B) of the Revised Code from functioning simultaneously as a real estate agent.

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Your request for an advisory opinion asks whether a person who serves as a city building inspector may, in addition to his official duties, participate in the sale of real estate as a real estate agent. You state that the building inspector is an employee of the city and you have cited the city building code to support that statement.

As an employee of a city the building inspector would fall within the purview of Section 102.04 (B) of the Revised Code:

"No person who is . . . employed by a . . . municipal corporation . . . 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 . . . employee."

The issue, therefore, is whether a city employee who is a real estate agent may receive compensation for participating, as an agent, in the sale of real estate. In short, is participating in the sale of real estate, by an agent, rendering services personally in a "case, proceeding, application or other matter" which is before any agency of the city.

Ohio Ethics Commission Advisory Opinion No. 75-006 described "case, proceeding, application and other matter" as those functions which fall between judicial and ministerial, namely "quasi-judicial" functions. Thus, an employee of a city cannot receive compensation, other than from his city agency, for services rendered personally by him in quasi-judicial functions which are before the city. "Quasi-judicial" was defined in the same Advisory Opinion as "a term applied to the action, discretion, etc. of public administrative officers, who are required to investigate facts, or ascertain the existence of facts, and draw conclusions from them, as a basis for their judicial action, and to exercise discretion of a judicial nature."

The word "before" was defined in Ohio Ethics Commission Advisory Opinion No. 75-006 as "being considered by, judged by, decided by, in the presence of, or under the official purview of."

The specific "real estate" functions performed by the person in his role as a real estate agent have not been set out in any of the correspondence accompanying the request for an advisory opinion. If any of the functions performed by the person while participating in the sale of real estate, as a real estate agent, could be described as rendering services personally for compensation in a case, proceeding, application, or other matter which is before an agency of the city, as that phrase has been defined above, there would be a violation of Section 102.04 (B) of the Revised Code.

If, however, no services are rendered personally for compensation by the city employee while functioning in his role as a real estate agent in a matter which is before an agency of the city, there is nothing within Section 102.04 (B) of the Revised Code prohibiting per se a building inspector of a city from selling real estate.

Your attention is directed, however, to two other prohibitions within Chapter 102 of the Revised Code. The building inspector who is also a real estate agent could conceivably engage in activities which would violate these sections. Therefore, he should be aware of the prohibitions and modify his conduct accordingly. Section 102.03 (B) of the Revised Code prohibits the use of confidential information for personal profit:

"During the period of his employment or service and for two years thereafter, no public official or employee shall disclose or use for his personal profit, without appropriate authorization, any information acquired by him in the course of his official duties which has been clearly designated to him as confidential when such confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary to the proper conduct of government business. No public official or employee shall disclose or use, without appropriate authorization, any information acquired by him in the course of his official duties which is confidential because of statutory provisions."

Section 102.03 (D) of the Revised Code prohibits the misuse of a public position by a public official or employee to attain extraordinary benefits:

"No public official or employee shall use or attempt to use his official position to secure any valuable thing or valuable benefit for himself that would not ordinarily accrue to him in the performance of his official duties, which thing or benefit is of such character as to manifest a substantial and improper influence upon him with respect to his duties."

The facts related in the correspondence of September 19 and October 3, 1975 do not indicate a violation of the prohibitions of Section 102.03 (B) and (D) of the Revised Code. However, your attention is directed to these divisions since a person who works as a building inspector for a city and as a private

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real estate agent may have the opportunity to engage in such activity.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised that a city building inspector who is an employee of a city, is not prohibited per se, by Section 104.04 (B) of the Revised Code from functioning simultaneously as a real estate agent.

OHIO ETHICS COMMISSION
(Mrs) Barbara H. RAWSON, Chairman