



OHIO ETHICS COMMISSION

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COLUMBUS 43215

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Advisory Opinion
No. 75-034
December 17, 1975

Syllabus by the Ohio Ethics Commission:

- (1) Supervisors of the soil and water conservation districts established pursuant to Chapter 1515 of the Revised Code are persons who are subject to the provisions of Division (B) of Section 102.04 of the Revised Code and thus are prohibited from receiving or agreeing to receive directly or indirectly compensation other than from the agency with which he serves for any services rendered or to be rendered by him personally in any case, proceeding, application, or other matter which is before any agency of the district of which he is an officer.
- (2) Supervisors of soil and water conservation districts established pursuant to Chapter 1515 of the Revised Code are not required to file financial disclosure statements with the Ohio Ethics Commission pursuant to Section 102.02 (A) of the Revised Code.
- (3) Supervisors of soil and water conservation districts established pursuant to Chapter 1515 of the Revised Code are "public officials" as that phrase is defined in Section 102.01 (B) of the Revised Code and, therefore, subject to the provisions of Divisions (B), (C) and (D) of Section 102.03 of the Revised Code.

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Your request for an advisory opinion asks whether supervisors of soil and water conservation districts are required to file financial disclosure statements with the Ohio Ethics Commission pursuant to Section 102.02 (A) of the Revised Code. You ask further whether supervisors of soil and water conservation districts are subject to the provisions of Section 102.03 and 102.04 of the Revised Code. You state that elections and duties of the supervisors of soil and water conservation districts are governed by Chapter 1515 of the Revised Code, and that the supervisors serve without compensation.

The first issue is what type of governmental entity is a soil and water conservation district. Soil and water conservation districts are created pursuant to Section 1515.03 of the Revised Code:

"Any seventy-five owners of land situated within the limits of the territory proposed to be organized into a soil and water conservation district may file a petition with the Ohio soil and water conservation commission asking that a district be organized to function in the territory described in the petition . . . Within thirty days after such petition has

been filed with the commission, it shall give due notice of a hearing upon the questions of the desirability and necessity of the creation of such district and of the appropriate boundaries to be assigned to such district. . . . After such hearing, if the commission determines that there is a need for a district to function in the territory considered at the hearing, it shall record such determination, and shall define, by metes and bounds or by legal subdivisions, the boundaries of such district. . . . "

Thus, a soil and water conservation district is not the state, a county or a city, but is more akin to what has been considered in other Advisory Opinions of the Ohio Ethics Commission as an "other governmental entity."

Section 102.04 (B) of the Revised Code states:

"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)

In Advisory Opinion No. 75-020, boards of education of local school districts were determined to be other governmental entities since they possess all nine characteristics set out to be determinative of whether an entity is an "other governmental entity" for purposes of Section 102.04 (B) of the Revised Code.

Those characteristics 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 of 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.

That Advisory Opinion stated, using the rule of ejusdem generis, 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 the entity was shown to be "of the same kind, class or nature" as counties, townships and municipal corporations.

From a reading of Section 1515.03 of the Revised Code, quoted above, it is evident that the soil and water conservation districts are established by statute and operate within a definite geographical area. Section 1515.03 of the Revised Code further details the governmental functions performed by the three soil and water conservation district supervisors, such as; conducting surveys, investigations and research relating to the character of soil erosion, flood water and sediment damage; developing plans for the conservation of soil resources and the control and prevention of soil erosion; and, implementing, constructing, repairing, maintaining and operating preventative control measures and other works for the improvement of natural resources conservation and development within the district.

This section further provides that the supervisors of the district may make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of their duties, as well as, sue and plead in the name of the district and be sued in its own name with respect to its contracts or torts of its officers, employees or agents when acting within the scope of their employment.

Thus, a soil and water conservation district is an entity established by statute; with elected supervisors who exercise governmental functions; within a definite geographical area; with the power to contract and sue or be sued in its own name. Balancing the above tests, a soil and water conservation district is of the "same kind, class or nature" of entity as counties, townships and municipal corporations. Thus, a soil and water conservation district, for purposes of Section 102.04 (B) of the Revised Code, is an "other governmental entity."

Section 1515.05 of the Revised Code sets out the procedure whereby the three supervisors of the soil and water conservation district are nominated and elected. Since the supervisors of the soil and water conservation districts established under Chapter 1515 of the Revised Code are persons elected to an office of an "other governmental entity", they are subject to the provisions of Section 102.04 (B) of the Revised Code.

The next issue is whether supervisors of soil and water conservation districts are persons who fall within the purview of Section 102.02 (A) of the Revised Code for purposes of filing financial disclosure statements. Section 102.02 (A) of the Revised Code provides:

"Every person who is elected to or is a candidate for a state, county, or city office, or the office of member of the United States congress, and every person who is appointed to fill a vacancy for an unexpired term in such an elective office, and the director and deputy directors of any department or agency of the state, all members of the board of commissioners on grievances and discipline of the supreme court and of the ethics commission created under section 102.05 of the Revised Code, and every other public official or employee who is designated by the ethics commission pursuant to division (B) of this section, excluding any presidential elector or delegate to a national convention shall file with the appropriate ethics commission on a form prescribed by the commission, a statement disclosing: . . . "

It is obvious from the above discussion that the elected supervisors of the soil and water conservation districts are not persons elected to or candidates for state, county or city office. Nor are they "directors or deputy directors" of any "department or agency of the state", since the Ohio Ethics Commission has determined that "departments or agencies" are those whose directors are listed in Section 121.03 of the Revised Code. The supervisors of the soil and water conservation districts, by virtue of that position, are not members of the board of Commissioners on Grievances and Discipline of the Supreme Court, nor members of the Ohio Ethics Commission created under Section 102.05 of the Revised Code. The Ohio Ethics Commission has not promulgated a rule which would include, as a class, the soil and water conservation district supervisors pursuant to division (B) of Section 102.02 of the Revised Code. Therefore, soil and water conservation district supervisors are not members of any class of individuals presently required to file financial disclosure statements.

The third issue to be considered is whether supervisors of soil and water conservation districts, as established by Chapter 1515 of the Revised Code, are "public officials or employees" as that term is defined in Section 102.01 (B) for purposes of Section 102.03 (B), (C) and (D) of the Revised Code which use that term. "Public official or employee" as defined in Section 102.01 (B) of the Revised Code is "any person who is elected or appointed to an elective office or employed by any public agency." Certain exemptions are listed after the definition which exclude "a person elected or appointed to the office of precinct, ward, or district committee member under Section 3517.03 of the Revised Code, any presidential elector, delegates to a national convention, members of school boards, village officials and employees, township trustees and officials and employees, and any member of a board, commission, or bureau of any county, or city who receives less than one thousand dollars per year for serving in such position.

Since the supervisors of the soil and water conservation districts are elected under the provisions of Section 1515.05 of the Revised Code, they are "persons . . . elected . . . to an elective office . . ." under Section 102.01 (B) of the Revised Code. Furthermore, they are not specifically noted in the list of persons exempted; therefore, they are "public officials." As such, the supervisors are subject to Divisions (B), (C) and (D) of Section 102.03 of the Revised Code:

"(B) 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.

(C) No public official or employee shall participate by a substantial and material exercise of administrative discretion in any license or ratemaking proceeding which directly affects the license or rates of any person to whom the official or employee or his immediate family, or a partnership, trust, business trust, corporation or association of which he or his family owns or controls more than five per cent, has sold goods or services totaling more than one thousand dollars during the preceding year, unless the official or employee has filed a written statement acknowledging such sale with the clerk or secretary of the state agency and the statement is entered in any public record of the agency's proceedings. This division shall not be construed to require the disclosure of clients of attorneys or patients of persons certified under section 4731.14 of the Revised Code which would be otherwise confidential.

(D) 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."

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised that: supervisors of the soil and water conservation districts established pursuant to Chapter 1515 of the Revised Code are persons who are subject to the provisions of Division (B) of Section 102.04 of the Revised Code and thus are prohibited from receiving or agreeing to receive directly or indirectly compensation other than from the agency with which he serves for any services rendered or to be rendered by him personally in any case, proceeding, application, or other matter which is before any agency of the district of which he is an officer; supervisors of soil and water conservation districts established pursuant to Chapter 1515 of the Revised Code are not required to file financial disclosure statements with the Ohio Ethics Commission pursuant to Section 102.02 (A) of the Revised Code; and, supervisors of soil and water conservation districts established pursuant to Chapter 1515 of the Revised Code are "public officials" as that phrase is defined in Section 102.01 (B) of the Revised Code, and therefore, subject to the provisions of Divisions (B), (C) and (D) of Section 102.03 of the Revised Code.

Barbara H. Rawson

OHIO ETHICS COMMISSION

(Mrs) Barbara H. Rawson, Chairman