



OHIO ETHICS COMMISSION

150 EAST BROAD STREET
COLUMBUS 43215
(614) 466-7090

Advisory Opinion
No. 75-035
December 17, 1975

Syllabus by the Ohio Ethics Commission:

- (1) A member of a municipal civil service commission is a person who is appointed to an office of a municipal corporation for purposes of Section 102.04 (B) of the Revised Code and thus is prohibited from receiving or agreeing to receive, directly or indirectly, compensation for services rendered or to be rendered by him personally in any case, proceeding, application or other matter which is before any agency of that municipal corporation, excluding the courts.
- (2) A member of a county hospital commission is a person appointed to an office of the county for purposes of Section 102.04 (B) of the Revised Code and thus is prohibited from receiving or agreeing to receive, directly or indirectly, compensation for services rendered or to be rendered by him personally in any case, proceeding, application or other matter which is before any agency of that county, excluding the courts.

* * * * *

Your request for an advisory opinion asks whether a person, who serves as a member of a civil service commission of a city and also as a member of a county hospital commission, is prohibited from receiving compensation for services rendered, personally, in cases, proceedings, applications or other matters before agencies of the city or the county, excluding the courts of those entities.

You state that you are presently a member of a municipal civil service commission and also serve as a member of a county hospital commission. You add that you are a practicing attorney and a member of a law firm and as such, you, as well as members and associates of the firm, could be called on to appear on behalf of clients before various commissions and agencies of both the municipality and county with which you serve. You state that the firm receives compensation from the clients for the services.

Section 102.04 (B) of the Revised Code provides:

"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."

In Advisory Opinion No. 75-024, the Ohio Ethics Commission, in discussing a municipal corporation civil service commission, held that a person who is a member of such commission is appointed to an office of a municipal corporation and therefore within the purview of Section 102.04 (B) of the Revised Code. Therefore, as a member of a municipal civil service commission, you are prohibited from receiving compensation for rendering services personally in cases, proceedings, applications or other matters which are before agencies of the municipal corporation of which you are an officer. That prohibition does not apply to matters before the courts of the municipal corporation.

The next issue is whether, as a member of a county hospital commission, you are a person appointed to an office of the county for purposes of Section 102.04 (B) of the Revised Code. Section 339.14 of the Revised Code provides for the appointment of members of a county hospital commission:

". . . [T]he board of county commissioners may, after a determination that the preservation of public health requires additional hospital facilities in the county, appoint a hospital commission of not less than three members, in this section called the county hospital commission. Not less than three members of such commission shall be appointed to represent the public, and there shall be appointed to the commission one additional member for each participating hospital corporation, and there may be appointed to the commission, one additional member for each non-participating charitable hospital corporation in the county and one or more members for any joint township hospital district participating under the agreement pursuant to section 513.081 of the Revised Code All members shall serve without compensation. Of the first three public members appointed to the commission one shall be appointed for a term of two years, one for a term of four years, and one for a term of six years. Thereafter, such public members shall be appointed for a term of six years as shall be any additional public members"

The duties of members of the county hospital commission are set forth in Section 339.14 of the Revised Code:

"(B) The county hospital commission after consultation with participating hospital corporations and agreement as to their respective needs and the needs of the public of the county for the hospital service may, with the consent of the board of county commissioners, accept conveyances of real estate and interest in real estate, situated within the county, from any person and may, with the consent of the board of county commissioners, enter into an agreement before or after such conveyance with such person or with one or more Ohio corporations organized for charitable hospital purposes or non-profit corporation organized to provide services to corporations organized for charitable hospital purposes, to lease to

such corporation or corporations upon such terms as may be agreed upon such real estate together with improvements thereof and buildings thereafter constructed thereon and furniture, fixtures, and equipment therein for use as a general hospital or a hospital facility, said lease shall be for a period not to exceed fifty years, renewable for a like term . . . or such general hospital or hospital facilities may be leased pursuant to and upon terms as provided pursuant to section 140.05 of the Revised Code, or said commission may enter into agreements with respect thereto as provided in section 140.03 of the Revised Code, notwithstanding other provisions of this section. . . .

(D) The county hospital commission may take all steps necessary for the acquisition or construction, equipment, enlarging, rebuilding, or other improvement, of hospital facilities and may request the board of county commissioners to submit to the electors of the county . . . a bond issue to cover the costs of hospital facilities, as defined in section 140.01 of the Revised Code. . . .

(F) The county hospital commission shall take title in the name of the county to any land conveyed pursuant to this section, and shall have final approval of all plans and specifications for the erection and equipping of the hospital facilities contemplated in this section. The commission may employ architects and such other assistants as may be required in the construction, including supervision, and pay the expenses thereof out of the funds provided for such hospital facilities.

(G) All funds arising from a bond issue pursuant to this section shall be placed in the county treasury to the credit of a fund to be known as the 'county hospital facility fund.' Such fund shall be paid out on the order of the county hospital commission, certified by the chairman or vice chairman and secretary or assistant secretary of the commission. . . .

(I) The county hospital commission has continuing jurisdiction of the hospital facilities constructed under this section . . . "

The Ohio Ethics Commission, in Advisory Opinion No. 75-007, listed the tests applied to determine whether a person has been appointed to an office of a county for purposes of falling within the purview of Section 102.04 (B) of the Revised Code. Those tests are: (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 was defined as a concept meant to imply the exercise of a duty entrusted to one by virtue of a statute or some public authority. That duty is not merely clerical but involves some discretionary, decision-making quality.

It is obvious from a reading of Section 339.14 of the Revised Code that members: (1) are appointed; (2) have a title; (3) exercise functions of government concerning the public; (4) are not subject to a contract of employment, but

rather are appointed for a term; and (5) exercise sovereign power in that their duties involve discretionary, decision-making qualities. Thus, members of county hospital commissions are persons appointed to an office of the county for purposes of Section 102.04 (B) of the Revised Code and, as such, are prohibited from receiving compensation for rendering services personally in cases, proceedings, applications or other matters which are before agencies of that county, excluding the courts.

In Advisory Opinion No. 74-009 the Ohio Ethics Commission discussed whether the prohibitions of Section 102.04 (B) of the Revised Code applied to law partners and associates of a municipal official:

"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 a 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."

It is obvious from the above that the prohibitions of Section 102.04 (B) of the Revised Code apply to an individual, personally, and not to his partners. Although a person who is both a member of a municipal civil service commission and a member of a county hospital commission is prohibited from receiving compensation for rendering services personally in cases, proceedings, applications and other matters which are before agencies, excluding the courts, of the entities of which he is an officer, he may share in partnership revenues for services rendered personally by his partners or associates before the municipal corporation and the county of which he is an officer.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised that a member of a municipal civil service commission is a person who is appointed to an office of a municipal corporation for purposes of Section 102.04 (B) of the Revised Code and thus is prohibited from receiving or agreeing to receive, directly or indirectly, compensation for services rendered by him personally in any case, proceeding, application or other matter which is before any agency of that municipal corporation, excluding the courts; and, that a member of a county hospital commission is a person appointed to an office of the county for purposes of Section 102.04 (B) of the Revised Code and thus is prohibited from receiving or agreeing to receive, directly or indirectly, compensation for services rendered or to be rendered by him personally in any case, proceeding, application or other matter which is before any agency of the county, excluding the courts.

Barbara H. Rawson

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