



OHIO ETHICS COMMISSION

150 EAST BROAD STREET

COLUMBUS 43215

(614) 466-7090

Advisory Opinion

No. 76-006

March 9, 1976

Syllabus by the Ohio Ethics Commission:

- 1) A county engineer or an employee of the county engineer's office is not prohibited by Section 102.04 (B) of the Revised Code from receiving compensation for conducting a land survey within that county unless the survey constitutes, or is an element of, a case, proceeding, application or other matter which is before any agency, department, board, bureau, commission, or other instrumentality, excluding the courts, of the county of which he is an officer or employee;
- 2) A county engineer or employee of a county engineer's office is not prohibited by Section 102.04 (B) of the Revised Code from receiving compensation for conducting a land survey in any other county or any municipal corporation, including those municipal corporations within the county of which he is an officer or employee.

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Your request for an advisory opinion asks whether a county engineer, who is by law, a registered professional engineer and surveyor, may perform land surveys for private clients for a fee in the county of his elective office. You ask also whether employees of the county engineer's office may engage in private land surveys for clients for a fee and, finally, whether the county engineer or his employees may perform land surveys within municipal corporations of the county of which they are an officer or employee or in adjacent counties of Ohio or bordering states.

Section 102.04 (B) of the Revised Code provides:

"(B) 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)

Section 315.01 of the Revised Code establishes the office of county engineer as an elective office:

"There shall be elected quadrennially in each county a county engineer who shall assume office on the first Monday in January next after his election and shall hold such office for four years." (Emphasis added)

Since Section 315.01 of the Revised Code provides county engineers are elected and since Section 102.04 (B) of the Revised Code applies to persons elected to a county office, county engineers are by virtue of being elected to a county office subject to the provisions of Section 102.04 (B) of the Revised Code.

Section 325.17 of the Revised Code provides that county engineers " . . . may appoint and employ the necessary deputies, assistants, clerks, bookkeepers or other employees for their . . . offices . . . " Thus, those individuals employed by a county engineer are persons employed by the county through the authority vested in the county engineer by virtue of Section 325.17 of the Revised Code. Therefore, employees of the county engineer's office are persons employed by a county and subject to the provisions of Section 102.04 (B) of the Revised Code.

Section 102.04 (B) of the Revised Code does not prohibit the county engineer or employees of the county engineer's office from conducting land surveys for clients for compensation unless the survey constitutes, or is an element of, "a case, proceeding, application or other matter which is before any agency, department, board, bureau, commission, or other instrumentality, excluding the courts, of the county of which he is an officer or employee." Or, stated in the affirmative, an officer or employee of the county is prohibited by Section 102.04 (B) of the Revised Code from receiving compensation for services, in this instance performing a land survey, when the survey involved constitutes a case, proceeding, application, or other matter which is before any agency, department, board, bureau, commission, or other instrumentality, excluding the courts, of the county of which he is an officer or employee.

As explained in Ohio Ethics Commission Advisory Opinion No. 74-001, Section 102.04 (B) of the Revised Code prohibits an elected official or public employee from receiving compensation for rendering services in a matter which is before an instrumentality of the governmental entity of which he is an officer or employee. A county engineer or employee of the county engineer's office is prohibited from rendering services personally, for compensation, only in a case, proceeding, application or other matter which is before an instrumentality of the county of which he is an officer or employee. Thus, an officer or employee of a county is not prohibited from receiving compensation for rendering services personally in a case, proceeding, application, or other matter which is before any instrumentality of any other county or any municipal corporation, including municipal corporations within the county of which he is an officer or employee.

Section 102.03 (D) of the Revised Code provides:

"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." (Emphasis added)

Section 102.01 (B) of the Revised Code defines the term "public official or employee":

"'Public official or employee' means any person who is elected or appointed to an elective office or employed by any public agency. . . ." (Emphasis added)

Section 102.01 (C) of the Revised Code defines the term "public agency":

"'Public agency' means the general assembly, all courts, and any department, division, institution, instrumentality, board, commission, or bureau of the state, a county or city." (Emphasis added)

Thus, a county engineer by virtue of being elected to an elective office is a public official or employee and subject to the provisions of Section 102.03 (D) of the Revised Code. Since the county engineer's office is an instrumentality of a county and, therefore, a public agency, employees of the county engineer's office are employees of a public agency, and thus, also subject to the provisions of Section 102.03 (D) of the Revised Code.

Section 102.03 (D) of the Revised Code prohibits a public official or employee from using or attempting to use his official position to secure something of value or benefit for himself that does not ordinarily accrue to him as a result of performing his official duties. However, Section 102.03 (D) of the Revised Code qualifies the above prohibition by providing that the thing of value or benefit received must be "of such character as to manifest a substantial and improper influence" upon the public official or employee with respect to his official duties.

As established by Ohio Ethics Commission Advisory Opinion No. 76-005, to be within the purview of Section 102.03 (D) of the Revised Code, the thing of value or benefit received by the public official or employee through the use or attempted use of his official position must be of such a nature as to improperly influence, consciously or unconsciously, a "reasonably prudent county engineer," or employee of the county engineer's office, with respect to the performance of his official duties.

Although there is no violation of Section 102.03 (D) of the Revised Code merely because a county engineer agrees, for a fee, to conduct a land survey for a private client, and such survey is not on county time, a violation may occur if as a result of the receipt of compensation, a "reasonably prudent county engineer or employee of the county engineer's office would be improperly influenced in the performance of his official duties.

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The Ohio Ethics Commission cautions that its Opinions may be relied upon only with respect to Chapter 102 of the Revised Code and the Opinions do not address possible violations of other laws, rules and regulations, such as, prohibitions with regard to county officials or employees engaging in private work, for compensation, on county time.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that a county engineer or an employee of the county engineer's office is not prohibited by Section 102.04 (B) of the Revised Code from receiving compensation for conducting a land survey within that county unless the survey constitutes, or is an element of, a case, proceeding, application or other matter which is before any agency, department, board, bureau, commission, or other instrumentality, excluding the courts, of the county of which he is an officer or employee, and that a county engineer or employee of a county engineer's office is not prohibited by Section 102.04 (B) of the Revised Code from receiving compensation for conducting a land survey in any other county or any municipal corporation, including those municipal corporations within the county of which he is an officer or employee.

Merom Brachman

OHIO ETHICS COMMISSION

Merom Brachman, Chairman