



## OHIO ETHICS COMMISSION

150 EAST BROAD STREET

COLUMBUS 43215

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Advisory Opinion

No. 76-007

March 9, 1976

Syllabus by the Ohio Ethics Commission:

- 1) A person who is employed as an administrative assistant to the mayor of a city is a "public official or employee" as that term is defined in Section 102.01 (B) of the Revised Code.
- 2) Section 102.03 (D) of the Revised Code does not prohibit the administrative assistant for the mayor of a city from receiving a membership in the Chamber of Commerce of that city, the annual dues of \$50 having been paid by the city, if representation in the Chamber has been determined by the city to be an official duty of the administrative assistant.
- 3) The receipt of compensation by the mayor's administrative assistant, in the form of a membership in the Chamber of Commerce which is to be paid by the city, in return for the administrative assistant representing the city at Chamber functions is not the receipt of compensation for services rendered in a case, proceeding, application or other matter as prohibited by Section 102.04 (B) of the Revised Code.

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Your request for an advisory opinion asks whether there would be a "conflict of interest" for the city to pay the fifty dollar annual dues for membership in the Chamber of Commerce for the mayor's administrative assistant to represent the city at Chamber functions. Through telephone conversations with the mayor's office, information was gathered which reflected that the administrative assistant to the mayor is a full-time employee of the city and that he was approached by the Chamber of Commerce to join as a representative of the city administration.

As an employee of the city, the mayor's administrative assistant is a "public official or employee" as that term is defined in Section 102.01 (B) of the Revised Code:

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

As a public employee the mayor's administrative assistant is within the purview of Section 102.03 (D) of the Revised Code.

"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)

Ohio Ethics Commission Advisory Opinion No. 76-005 discusses the phrase emphasized above and states:

"[T]he valuable thing or benefit secured must not 'ordinarily accrue' to the public official or employee in the performance of his official duties. Thus, the valuable thing or valuable benefit must be something other than the regular salary, expenses and fringe benefits received by that public official or employee and every other public official or employee in a similar position for the performance of his official duties."

Thus, the valuable thing or valuable benefit must be something other than the regular salary, expenses and fringe benefits received by that public official or employee before Section 102.03 (D) of the Revised Code applies.

It is clear that the salary, expenses and fringe benefits paid by the city to an employee "ordinarily accrue" if they are in payment for the performance of official duties. If the city deems it an official duty of the mayor's administrative assistant to represent the city in Chamber of Commerce functions, the "valuable thing or benefit," payment by the city of the fifty dollars for the annual membership dues, ordinarily accrues to the administrative assistant, and is not within the prohibitions of Section 102.03 (D) of the Revised Code.

The other section of Chapter 102 of the Revised Code which deals with "conflict of interest" by a city employee is Section 102.04 (B) of the Revised Code:

"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)

The general thrust of Section 102.04 of the Revised Code is the creation of a standard of conduct for public officials and employees with regard to how they garner compensation for the performance of services other than those rendered in an official capacity.

Compensation is defined in Section 102.01 (A) of the Revised Code as ". . . money, thing of value, or financial benefit." Membership in the Chamber of Commerce received by the mayor's administrative assistant is a thing of value to him and, therefore, "compensation" as defined in Section 102.01 (A) of the Revised Code. The fifty dollars dues is to be paid by the city to the Chamber which, in turn, grants a membership to the mayor's administrative assistant. If the fifty dollars were paid by the city, upon the Mayor's request, to the administrative assistant directly, it would be exempted compensation since it would be "from the agency with which he serves" -- the mayor's office of the city. However, in return for the city's payment of fifty dollars, the Chamber is granting the membership to the administrative assistant. Thus, it is necessary to examine the service rendered by the mayor's administrative assistant for which the compensation, the membership, is received.

The question is whether the administrative assistant to the mayor is receiving compensation "for services rendered by him personally in a case, proceeding, application or other matter," when he accepts a membership in the Chamber of Commerce.

The phrase "case, proceeding, application or other matter" was discussed and defined in Ohio Ethics Commission Advisory Opinion No. 75-006. The Opinion held that the phrase described "those functions which fall between judicial and ministerial" or quasi-judicial functions performed by administrative and legislative officers "who are required to investigate facts or ascertain facts, and draw conclusions from them . . . "

The act of "rendering services" in such matters was described in that Advisory Opinion as, "the performing of services such as advising, consulting, representing or the like which involve matters 'before' the General Assembly or an agency or a department, division, institution, instrumentality, board, commission or bureau . . . "

Nothing in your request, or in a subsequent telephone conversation, indicates that the administrative assistant would be performing any service in a "case, proceeding, application or other matter." The beneficial affect of his membership would inure to the city, which the administrative assistant is to represent at Chamber functions. Thus, when viewing the general purpose of Section 102.04 of the Revised Code, nothing in the facts indicate that the standard of conduct created therein would be violated by the city paying the \$50 annual membership dues for the administrative assistant's membership in the Chamber of Commerce in return for his representation of the city at Chamber functions.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised that: a person who is employed as an administrative assistant to the mayor of a city is a "public official or employee" as that term is defined in Section 102.01 (B) of the Revised Code; Section 102.03 (D) of the Revised Code does not prohibit the administrative assistant for the mayor of a city from receiving a membership in the Chamber of Commerce of that city, the annual dues of \$50 having been paid by the city, if representation in the Chamber has been

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determined by the city to be an official duty of the administrative assistant; and the receipt of compensation by the mayor's administrative assistant, in the form of a membership in the Chamber of Commerce which is to be paid by the city, in return for the administrative assistant representing the city at Chamber functions is not the receipt of compensation for services rendered in a case, proceeding, application or other matter as prohibited by Section 102.04 (B) of the Revised Code.

  

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OHIO ETHICS COMMISSION

Merom Brachman, Chairman