



OHIO ETHICS COMMISSION

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Advisory Opinion

No. 76-008

April 6, 1976

Syllabus by the Ohio Ethics Commission:

- 1) A member of the Ohio Board of Tax Appeals is a "state official or employee" and within the purview of Section 102.03 (A) of the Revised Code.
- 2) Section 102.03 (A) of the Revised Code prohibits a former member of the Ohio Board of Tax Appeals, for a period of twelve months after he leaves office, from representing a client before the Board of Tax Appeals only with regard to those matters with which the member, during his service on the Board, was directly concerned and in which he personally participated by a substantial and material exercise of administrative discretion.

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Your request for an advisory opinion asks whether "a lawyer who served as a member of the Ohio Board of Tax Appeals pursuant to appointment by the Governor of Ohio from August 2, 1975 until his service was terminated on February 26, 1976, by failure of the Ohio Senate to confirm such appointment, may represent a client before the Ohio Board of Tax Appeals on a matter with which such former member was not directly concerned and in which he did not personally participate by a substantial and material exercise of administrative discretion during his period of service."

Section 102.03 (A) of the Revised Code provides:

"No state official or employee shall represent a client before the public agency by which he is or within the preceding twelve months was employed or on which he serves or within the preceding twelve months had served on any matter with which the person is or was directly concerned and in which he personally participated during his employment or service by a substantial and material exercise of administrative discretion. As used in this division, 'matter' does not include the proposal, consideration, or enactment of statutes, rules, regulations, ordinances, resolutions, or charter or constitutional amendments." (Emphasis added)

The term "state official or employee" is not specifically defined in Chapter 102 of the Revised Code.

Rules of statutory construction provide that in the absence of a statutory definition, words of a statute are given their plain, commonly understood meaning. As stated in Kocsorak v. Cleveland Trust Co., 151 Ohio St. 212, 216 (1949) ". . . words of a statute must be given their common, ordinary and accepted meaning in the connection in which they are used . . ." The popular understanding of the term "state official" as stated in 49 O Jur 2d State of Ohio Section 13 "is one whose jurisdiction is coextensive with the state" and in a legal sense "one who receives his authority under the laws of the state and performs some governmental functions of the state." This interpretation of the term "state official" is in accord with the rule of construction, noscitur a sociis, which, as stated in Myers v. Seaberger, 45 Ohio St. 232, 236 (1887) provides ". . . the meaning of a word may be ascertained by reference to the meaning of words associated with it."

Section 102.04 (A) of the Revised Code, the other section of Chapter 102 of the Revised Code which applies only to persons affiliated with the state, specifically affects "persons elected or appointed to an office of or employed by the General Assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts . . ." Applying the rule of noscitur a sociis and interpreting the term "state official or employee," as it is most commonly and naturally understood, the term is construed to include those same persons who are subject to Section 102.04 (A) of the Revised Code.

Therefore, those persons who are "state officials or employees" for purposes of Section 102.03 (A) of the Revised Code are persons who are elected or appointed to an office of an instrumentality of the state or employed by a state agency.

The Ohio Ethics Commission in Advisory Opinion No. 75-004 established five tests which are applied to determine if a person is appointed to an office of an agency of the state. These tests were applied in Ohio Ethics Commission Advisory Opinion No. 76-004 in determining that a member of the Board of Tax Appeals was a person appointed to an office of a board of the state for purposes of Section 102.04 (A) of the Revised Code.

Since it has been determined that the proper construction of the term "state official" is a person elected or appointed to an office of an agency of the state, a member of the Board of Tax Appeals by virtue of being a person appointed to an office of a board of the state would also be a "state official" as that term is used in Section 102.03 (A) of the Revised Code, and, therefore, subject to the prohibitions established in that Section.

Another term, "public official or employee," which is used in Division (B) (C) and (D) of Section 102.03 of the Revised Code, is defined by Section 102.01 (B) of the Revised Code to mean:

" . . . any person who is elected or appointed to an elective office or employed by any public agency . . . "

However, a corollary to the often stated rule of construction that a term which is defined in a statute may not be interpreted other than as defined, is the rule which provides that if a statute uses two different terms each term is presumed to have a different meaning. Thus, the definition of "public official or employee" cannot be applied to the term "state official or employee." If the legislature had intended Section 102.03 (A) of the Revised Code to apply to "public officials or employees" at the state level they would have used the term "state public official or employee" rather than the term "state official or employee." Therefore, a member of the Board of Tax Appeals is a "state official" by virtue of being appointed to an office of a board of the state and subject to the prohibitions of Section 102.03 (A) of the Revised Code.

Section 102.03 (A) of the Revised Code prohibits members of the Board of Tax Appeals, as well as those persons who in the past twelve months have served as members, from representing clients before the Board of Tax Appeals on certain matters. Those matters include matters with which the current or former member of the Board of Tax Appeals was "directly concerned" or in which he "personally participated . . . by a substantial and material exercise of administrative discretion" during the time he served on the Board. Conversely, the prohibition established in Section 102.03 (A) of the Revised Code does not prohibit a current or former member of the Board of Tax Appeals from representing clients before the Board on matters with which he was not "directly concerned" or in which he did not "personally participate . . . by a substantial and material exercise of administrative discretion" while serving on the Board.

The phrases "directly concerned", "personally participate" and "substantial and material exercise of administrative discretion" as used in Section 102.03 (A) of the Revised Code are defined in Ohio Ethics Commission Advisory Opinion No. 75-014.

If, as stated in your request for an advisory opinion, a former member of the Board of Tax Appeals represents clients before the Board of Tax Appeals in matters with which such former member was not "directly concerned" and in which he did not "personally participate . . . by a substantial and material exercise of administrative discretion" as those phrases are defined in Ohio Ethics Commission Advisory Opinion No. 75-014, there would be no violation of Section 102.03 (A) of the Revised Code.

Therefore, it is the opinion of the Ohio Ethics Commission and you are so advised that a member of the Ohio Board of Tax Appeals is a "state official or employee" and within the purview of Section 102.03 (A) of the Revised Code and that Section 102.03 (A) of the Revised Code prohibits a former member of the Ohio Board of Tax Appeals, for a period of twelve months after he leaves office from representing a client before the Board of Tax Appeals only with regard to those matters with which the member, during his service on the Board, was directly concerned and in which he personally participated by a substantial and material exercise of administrative discretion.

  
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