



OHIO ETHICS COMMISSION

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Advisory Opinion

No. 76-009

April 6, 1976

Syllabus by the Ohio Ethics Commission:

- 1) Section 102.04 (A) of the Revised Code applies to a "person . . . appointed to an office of . . . any . . . board . . . of the state . . ." regardless of whether he receives compensation as a member of that board.
- 2) A member of the Ohio Housing Development Board is prohibited by Section 102.04 (A) of the Revised Code from receiving, directly or indirectly, compensation other than from the agency with which he serves for services rendered personally by him as a lobbyist on a matter which is before the General Assembly.

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Your request for an advisory opinion asks whether a person who is a member of the Ohio Housing Development Board, created by Section 128.03 of the Revised Code, may, during his term of service on that board, receive compensation from a citizen's league as a lobbyist for promoting the redevelopment of strip mined areas in Appalachia.

You relate that you are currently a member of the Ohio Housing Development Board, that your term will not expire until 1979 and that Section 128.03 of the Revised Code provides for compensation of the members of the Board. You state that you have been approached by the Citizen's League for Appalachian Redevelopment to assist them as a legislative agent, registered with the Office of the Secretary of State, by promoting, advocating and opposing legislation before the General Assembly affecting general redevelopment of strip mined areas. You indicate that you will be compensated for functioning as a legislative agent for the League during the current and subsequent session of the General Assembly. You state that you have informed the Citizen's League that due to your membership on the Ohio Housing Development Board, you could not lobby on matters which are under the jurisdiction of that board. For example, you would not lobby on matters concerning housing development, but would consider the offer in regard to the other projects the League is contemplating, including but not limited to, parks and recreational facilities.

In Ohio Ethics Commission Advisory Opinion No. 75-006 the Ohio Ethics Commission held that a member of the Ohio Housing Development Board is "appointed to an office" of a board for the state for purposes of Section 102.04 (A) of the Revised Code:

"No person 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, 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 the general assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts."
(Emphasis added).

A member of the Ohio Housing Development Board is specifically prohibited from receiving compensation for rendering services personally on matters which are before the General Assembly. Since compensation from the Ohio Housing Development Board is compensation "from the agency with which he serves" it is exempted from the prohibition of Section 102.04 (A) of the Revised Code.

Section 101.71 of the Revised Code sets forth the requirement that employers of lobbyists must register with the Secretary of State:

"Any person, firm, corporation, or association, or any officer or employee of a corporation or association acting for or on behalf of such corporation or association, who or which directly or indirectly employs any person, firm, corporation, or association to promote, advocate, amend, or oppose any matter pending or that might legally come before the General Assembly or either house thereof, or a committee of the General Assembly or of either house thereof, shall within one week from the date of appointment furnish in a signed statement to the Secretary of State the following information . . . "
(Emphasis added).

From the above cited section it appears that a lobbyist's primary function is to "promote, advocate, amend or oppose any matter" pending before the General Assembly, either house or any committee thereof. The question is, therefore, whether these activities constitute "rendering services" on a "matter which is before the General Assembly" as those terms are used in Section 102.04 (A) of the Revised Code.

A review of Section 101.71 et seq. of the Revised Code, obviates the fact that a lobbyist's duties are to render services on matters before the General Assembly. Section 101.71 of the Revised Code states that a lobbyist promotes, advocates, amends or opposes:

"any matter pending, or that might legally come before the general assembly or either house thereof, or a committee of the general assembly or of either house thereof . . ." (Emphasis added).

Section 101.72 of the Revised Code, which deals with certification of a lobbyist by the Secretary of State, describes the duties of a lobbyist:

" . . . promote, advocate, oppose, or seek to have amended in any manner any matter pending or that might legally come before the general assembly or either house thereof, or before a committee of the general assembly, or of either house thereof . . ." (Emphasis added).

Section 101.75 of the Revised Code requires the filing of an expense statement reflecting all expenses incurred by a lobbyist or his employer which relate to services performed by a lobbyist on:

" . . . any matter that was pending or that might legally have come before such session of the general assembly or either house thereof, or a committee of the general assembly or either house thereof . . ." (Emphasis added).

Section 101.76 of the Revised Code prohibits contingent fee arrangements between the employer and a lobbyist and places that prohibition on employment with regard to:

" . . . any matter pending or that might legally come before the general assembly or either house thereof, or before a committee of the general assembly or either house thereof . . ." (Emphasis added).

It is obvious from Sections 101.71, 101.72, 101.75 and 101.76 of the Revised Code that lobbyists render services on matters before the General Assembly.

The rendering of services in matters which are before the General Assembly is the type of activity to which Section 102.04 (A) of the Revised Code is addressed.

The "rendering of services" in the context of Section 102.04 (A) of the Revised Code was described in Ohio Ethics Commission Advisory Opinion No. 75-006 as, "the performing of services such as advising, consulting, representing or the like which involves matters 'before' the General Assembly . . ." (Emphasis added). The terms "advising, consulting, or representing" include such activities on the part of a lobbyist as promoting, advocating or opposing matters before the General Assembly. Ohio Ethics Commission Advisory Opinion No. 75-006 further stated that a matter is "before" a governmental agency when it is being considered by, decided by, in the presence of or under the official purview of an agency of a governmental entity, such as the General Assembly.

A lobbyist who renders services on matters which are being considered by, decided by, in the presence of or under the official purview of the General Assembly is rendering services on matters "before" the General Assembly.

Section 102.04 (A) of the Revised Code provides that:

"No person . . . appointed to an office of . . . any . . . board . . . of the state . . . shall receive . . . compensation . . . for any service rendered . . . by him personally in any . . . matter which is before the General Assembly . . . "

Therefore, if a member of the Ohio Housing Development Board receives compensation for rendering services personally as a lobbyist for a citizen's league on a matter before the General Assembly, such member would be in violation of Section 102.04 (A) of the Revised Code.

Section 102.04 (A) of the Revised Code applies regardless of whether the person has registered as a lobbyist with the Secretary of State. Such registration is a separate, distinct requirement of the Revised Code. For purposes of Section 102.04 (A) of the Revised Code, registration is only an indication that services will be performed on matters before the General Assembly. Also, whether a person receives compensation from the board on which he serves is immaterial to the determination of whether there is a violation of Section 102.04 (A) of the Revised Code. That section applies, for example, to a "person . . . appointed to an office of . . . any . . . board . . . of the state . . . " and there is no requirement that the office to which the person is appointed be a remunerative office. Therefore, as a member of the Ohio Housing Development Board, you are prohibited from receiving compensation from a citizen's league for rendering services personally on matters before the General Assembly whether or not you are registered as a lobbyist and whether or not you receive compensation for serving on the Board.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised that Section 102.04 (A) of the Revised Code applies to a "person . . . appointed to an office of . . . any . . . board . . . of the state . . . regardless of whether he receives compensation as a member of that board and that a member of the Ohio Housing Development Board is prohibited by Section 102.04 (A) of the Revised Code from receiving, directly or indirectly, compensation other than from the agency with which he serves for services rendered personally by him as a lobbyist on a matter which is before the General Assembly.

Merom Brachman

OHIO ETHICS COMMISSION

Merom Brachman, Chairman