



OHIO ETHICS COMMISSION

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Advisory Opinion

No.: 79-002

May 17, 1979

Syllabus by the Commission:

- 1) Division (D) of Section 102.03 of the Revised Code prohibits a public official or employee from soliciting or receiving a fee for consulting services from a private firm if the consulting fee is received from a party that is either interested in matters before the agency with which the official or employee serves, or is regulated by that agency.
- 2) Division (A) of Section 102.04 of the Revised Code prohibits a public official or employee from receiving compensation, in the form of a consulting fee, for services rendered or to be rendered by him for a private firm in a matter that is before the agency with which he serves.

In your request for an Ohio Ethics Commission Advisory Opinion, you asked whether the Ohio Ethics Law and related statutes would prohibit the division chief of an agency of the state from serving as a consultant for a company that is subject to regulation by the department on matters that are not usually under the jurisdiction of the division with which he serves.

You stated, by way of history, that the person in question is employed by an agency of the state as an engineering supervisor, with the rank of division chief in a program office of the agency. The person in question seeks to serve as an engineering consultant "for persons which are subject to regulation or being regulated by this agency, (but the) services do not specifically relate to matters that are normally the responsibility of the program office in which that individual is employed." You state further that occasionally problems relate to the functions of more than one program office of the agency.

Division (D) of Section 102.03 of the Revised Code provides:

"No public official or employee shall use or attempt to use his official position to secure anything of value for himself that would not ordinarily accrue to him in the performance of his official duties, which thing is of such character as to manifest a substantial and improper influence upon him with respect to his duties."

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The pertinent elements of Division (D) of Section 102.03 of the Revised Code are: 1) a public employee; 2) is prohibited from using or attempting to use his official position; 3) to secure anything of value for himself; 4) the thing of value must be something that would not ordinarily accrue to the employee in the performance of his official duties; and 5) the thing of value must be of such character as to manifest a substantial and improper influence upon him with respect to his duties.

A state employee is a "public official or employee," as that term is defined in Division (B) of Section 102.01 of the Revised Code. In addition, a fee for consulting services is a thing of value that would not ordinarily accrue to the employee in the performance of his official duties. The Commission believes that solicitation or acceptance of a consulting fee could constitute improper use or attempted use of his official position.

It is also necessary to determine whether receipt of a fee for consulting services would be "of such character as to manifest a substantial and improper influence upon (the public employee) with respect to his duties." This is a question of fact that depends upon: 1) the nature of the consulting contract; and 2) the party with whom the contract is entered. In the instant case, if the party with whom the contract is entered is "interested" in matters before the agency with which the employee serves, or is regulated by that agency, receipt of of a fee for consulting services would manifest a substantial and improper influence upon the employee with respect to his duties, since such an arrangement could affect subsequent decisions by the employee when a matter involving the private party with whom he has the consulting contract comes before the agency.

We conclude, therefore, that Division (D) of Section 102.03 of the Revised Code prohibits a public official or employee from receiving a fee for consulting services from a private firm if the consulting fee is received from a party that is either interested in matters before the agency with which the official or employee serves, or regulated by that agency. It should be emphasized that this is a question of fact that must be determined in light of the circumstances of a particular case.

Division (A) of Section 102.04 of the Revised Code provides, in pertinent part:

"Except as provided in division (D) of this section, 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."

The pertinent elements of Division (A) of Section 102.04 of the Revised Code are: 1) a person employed by an agency of the state; 2) is prohibited from receiving or agreeing to receive compensation, directly or indirectly, except from the agency with which he serves; 3) 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 or agency of the state. This provision would prohibit a division chief employed by an agency of the state from receiving or agreeing to receive compensation, directly or indirectly, 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 or agency of the state, including the agency by which he is employed. We conclude, therefore, that Division (A) of Section 102.04 of the Revised Code would prohibit a division chief of a state agency from receiving compensation, directly or indirectly, in the form of a consulting fee, for any service rendered or to be rendered by him personally in any matter before the agency with which he serves, whether or not the matter comes before his division or program office of the agency. The exemption of Division (D) of Section 102.04 of the Revised Code does not apply in the instant case.

Your attention is directed to Division (A) of Section 102.03 of the Revised Code, which prohibits a public official or employee from representing a client or acting in a representative capacity for any person before his own agency on any matter with which he is directly concerned and in which he personally participates by a substantial and material exercise of administrative discretion. This provision would prohibit the person in question from representing a private client before his agency on a matter which is under his official purview. Your attention is also directed to Division (A) of Section 2921.43 of the Revised Code, which prohibits any public servant from knowingly soliciting or receiving "any compensation or fee, other than as allowed by law, to perform his official duties," and Section 2921.02 of the Revised Code, which prohibits any promise, offer, or gift of any valuable thing or valuable benefit to a public official or employee with purpose to corrupt or to influence him with respect to his official duties. Although the latter two provisions are not within the Ohio Ethics Commission's statutory interpretative authority, we refer to them for your information.

The conclusions of this advisory opinion are based on an examination of the facts presented. The Ohio Ethics Commission cautions that its advisory opinions may be relied upon only with respect to questions arising under Chapter 102. and Section 2921.42 of the Revised Code, and do not address possible violations of other laws or rules.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that: 1) Division (D) of Section 102.03 of the

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Revised Code prohibits a public official or employee from soliciting or receiving a fee for consulting services from a private firm if the consulting fee is received from a party that is either interested in matters before the agency with which the official or employee serves, or regulated by that agency; and 2) Division (A) of Section 102.04 of the Revised Code prohibits a public official or employee from receiving compensation, in the form of a consulting fee, for services rendered or to be rendered by him personally for a private firm in a matter that is before the agency with which he serves.

Mary K. Lazarus

MARY K. LAZARUS, Chairperson
Ohio Ethics Commission