



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
8 EAST LONG STREET, SUITE 1200
COLUMBUS, OHIO 43215
(614) 466-7090

Advisory Opinion
Number 87-001
January 15, 1987

Syllabus by the Commission:

- (1) Division (A) of Section 102.03 of the Revised Code prohibits a present or former public official or employee, during his public employment or service and for twelve months thereafter, from representing a client or acting in a representative capacity for any person, including a new employer, on any matter in which he personally participated while in government service.
- (2) A present or former public official or employee is prohibited by Division (A) of Section 102.03 of the Revised Code from representing a client or other person before his own public agency or former public agency, and before any other public agency, as defined in Division (C) of Section 102.01 of the Revised Code, during his public employment or service and for twelve months thereafter, on a matter in which he personally participated as a public official or employee.
- (3) Division (A) of Section 102.03 of the Revised Code does not, per se, prohibit a former employee of a state agency from accepting employment with a private firm under contract with the agency, provided he does not represent that firm before any public agency on any matter in which he personally participated as a public official or employee.

* * * *

You asked whether Division (A) of Section 102.03 of the Revised Code, the "revolving door" prohibition of the Ohio Ethics Law, prohibits a former employee of the Department of Mental Retardation and Developmental Disabilities from serving as a consultant for a firm under contract with the Department.

You stated, by way of history, that you are a former employee of the Department of Mental Retardation and Developmental Disabilities (hereinafter Department), and that you left the Department nine months ago. You have been asked to provide consulting services for a small residential provider which operates under contract with the Department. You stated further that you have had contact with the provider in the past in your capacity as an employee of the Department. However, you stated that under the consulting contract, you would provide services directly to the firm and to its clients, and would not represent the firm before the Department or any other public agency.

Division (A) of Section 102.03 of the Revised Code provides, in pertinent part:

No present or former public official or employee shall, during his public employment or service or for twelve months thereafter, represent a client or act in a representative capacity for any person on any matter in which he

personally participated as a public official or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion As used in this division, "matter" includes any case, proceeding, application, determination, issue, or question, but does not include the proposal, consideration, or enactment of statutes, rules, ordinances, resolutions, or charter or constitutional amendments. As used in this division, "represent" includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person. Nothing contained in this division shall prohibit, during such period, a former public official or employee from being retained or employed to represent, assist, or act in a representative capacity for the public agency by which he was employed or on which he served. This division shall not be construed to prohibit the performance of ministerial functions, including, but not limited to, the filing or amendment of tax returns, applications for permits and licenses, incorporation papers, and other similar documents. (Emphasis added.)

The pertinent elements of this provision are: 1) a present or former public official or employee; 2) is prohibited from representing a client or acting in a representative capacity for any person (defined in Section 1.59 of the Revised Code to include an individual, corporation, partnership, association, or other similar entity); 3) before his former agency or any other public agency; 4) on any matter in which he personally participated as a public official or employee; 5) during government service and for one year thereafter (See: Ohio Ethics Commission Advisory Opinions No. 80-008, 81-002, 82-002, 84-005, and 86-001).

For purposes of Division (A) of Section 102.03 of the Revised Code, "personal participation" includes a "decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion." The term "matter" is defined as "any case, proceeding, application, determination, issue, or question, but does not include the proposal, consideration, or enactment of statutes, rules, ordinances, resolutions, or charter or constitutional amendments." The term "represent" is defined as "any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person." It must be emphasized that a present or former public official or employee is prohibited by Division (A) from representing a client or other person not only before his own public agency or former agency during his public service and for twelve months thereafter on a matter in which he personally participated, but is also prohibited from acting in a representative capacity before any public agency during his public service and for twelve months thereafter on a matter in which he personally participated as a public official or employee. Division (C) of Section 102.01 of the Revised Code defines "public agency," for purposes of Section 102.03, to include "the general assembly, all courts, any department, division, institution, board, commission, authority, bureau or other instrumentality of the state, a county, city, village, township, and the five state retirement systems, or any other governmental entity." Division (C) of Section 102.01 further provides, however, that "public agency" does not include "a department, division, institution, board, commission, authority, or other instrumentality of the state or a county, municipal corporation, township, or other governmental entity that functions exclusively for cultural, educational, historical, humanitarian, advisory, or research purposes; does not expend more than ten thousand dollars per calendar year, excluding salaries and wages of employees; and whose members are uncompensated."

Division (A) of Section 102.03 of the Revised Code does not prohibit a former public official or employee from: 1) representing private clients on new matters, legislative matters, or matters in which he had not personally participated; 2) being retained or employed by the agency with which he served; and 3) performing ministerial functions, such as tax returns and applications for permits or licenses.

Division (A) of Section 102.03 of the Revised Code does not prohibit a former public official or employee from seeking or accepting employment in the private sector. It prohibits a present or former public official or employee from representing private clients, including a new employer, before his former agency or any other public agency, on any matter in which he personally participated, during government service and for a period of one year thereafter.

In the instant case, the individual was contacted by a firm under contract with the Department subsequent to his departure from government service. The arrangement contemplates that he will provide services directly to the firm and its clients, but not represent the firm before the Department or any other public agency. In addition, he would not be in a position to prepare documents that will be submitted to the Department by the firm.

Finally, it should be noted that Division (D) of Section 102.03 of the Revised Code prohibits a public official or employee from seeking employment by sending resumes to firms that appear before or are regulated by his agency, unless the person withdraws himself from consideration of any matter involving any firm with which he has had contact regarding possible employment (See: Ohio Ethics Commission Advisory Opinion No. 77-003).

This advisory opinion is based on the facts presented and is limited to questions arising under Chapter 102., and Sections 2921.42 and 2921.43 of the Revised Code.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that: (1) Division (A) of Section 102.03 of the Revised Code prohibits a present or former public official or employee, during his public employment or service and for twelve months thereafter, from representing a client or acting in a representative capacity for any person, including a new employer, on any matter in which he personally participated while in government service; (2) A present or former public official or employee is prohibited by Division (A) of Section 102.03 of the Revised Code from representing a client or other person before his own public agency or former public agency, and before any other public agency, as defined in Division (C) of Section 102.01 of the Revised Code, during his public employment or service and for twelve months thereafter, on a matter in which he personally participated as a public official or employee; and (3) Division (A) of Section 102.03 of the Revised Code does not, per se, prohibit a former employee of a state agency from accepting employment with a private firm under contract with the agency, provided he does not represent that firm before any public agency in any matter on which he personally participated as a public official or employee.

Merom Brachman

Merom Brachman, Chairman
Ohio Ethics Commission