

# OHIO ETHICS COMMISSION

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David E. Freel, *Executive Director*

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**INFORMATION SHEET: ADVISORY OPINION NO. 2004-04**  
**REVOLVING DOOR RESTRICTIONS**  
**“PROPOSAL, CONSIDERATION, OR ENACTMENT” OF LEGISLATION**

**What is the question addressed in the opinion?**

Does the Ethics Law prohibit a former Deputy Director of a state Department from representing any person before the legislature on pending legislation related to the Department’s authority or programs?

**What is the answer in the opinion?**

Yes. The “Revolving Door” restrictions in the Ethics Law prohibit a former Deputy Director of a state Department from representing any person, before any public agency, on any “matter” in which he personally participated as Deputy Director. “Matter” is defined to include any case, proceeding, application, determination, issue, or question. However, “matter” does not include the “proposal, consideration, or enactment” of statutes or rules.

Where he personally participated in reviewing, drafting, or other administrative activity on pending legislation, the former Deputy Director personally participated in a “matter,” within the revolving door restrictions, because his work was not the “proposal, consideration, or enactment” of legislation. The Deputy Director is, therefore, prohibited from representing any person, before any public agency, on all matters in which he personally participated, including matters related to legislation if they are not limited to the proposal, consideration, or enactment of the legislation.

**To whom does this opinion apply?**

This opinion applies to any current or former public officials or employees who are subject to R.C. 102.03(A)(1).

**When will the conclusions of the opinion become effective?**

The opinion will become effective, with any changes requested, upon acceptance by the Commission.

**For More Information, Please Contact:**

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**IT IS NOT AN ETHICS COMMISSION ADVISORY OPINION.**  
**ADVISORY OPINION NO. 2004-04 IS ATTACHED.**

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Advisory Opinion  
Number 2004-04  
December 13, 2004

## Syllabus by the Commission:

- (1) Division (A)(1) of Section 102.03 of the Revised Code prohibits a former Deputy Director of a state Department from representing any person, before any public agency, on any “matter” in which he personally participated as Deputy Director, including a matter that involves pending legislation affecting the Department’s authority or programs;
- (2) For purposes of Division (A)(1) of Section 102.03 of the Revised Code, a “matter” includes any case, proceeding, application, determination, issue, or question, but does not include the “proposal, consideration, or enactment” of statutes or rules;
- (3) When a Deputy Director of a state Department is involved in reviewing, drafting, or other administrative activity related to a pending bill, the Deputy Director has personally participated in a “matter” and is not the “proposal, consideration, or enactment” of a statute;
- (4) When a Deputy Director of a state Department has testified before the General Assembly on a pending bill, but has not taken other actions related to the bill or the Department’s authority or programs that will be affected by the bill, the Deputy Director has not personally participated in a matter because his testimony on the bill is part of the “proposal, consideration, or enactment” of a statute.

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You state that you are currently a Deputy Director of a state department (Department) and that you are planning to resign at the end of the year. You have asked the Ohio Ethics Commission whether the Ohio Ethics Law and related statutes prohibit you from representing any person, including a new employer or a client, before the General Assembly on legislation pending before the General Assembly concerning the Department’s authority and programs.

As Deputy Director, you are responsible for reviewing, drafting, and performing other administrative activity related to legislation before the General Assembly that involves the Department's authority and programs. You have also explained that you have sometimes testified, before the General Assembly, on pending legislation related to the Department's authority and programs.

### **Brief Answer**

As explained more fully below, R.C. 102.03(A)(1) prohibits a former Department Deputy Director, for twelve months after he leaves his state position, from representing any person, before any public agency, on any matter in which he personally participated as Deputy Director. However, the term "matter" does not include the "proposal, consideration, or enactment" of statutes or rules.

If your work on pending legislation, as a Deputy Director, included participating as an administrative employee of the Department in reviewing, drafting, or other administrative activity related to the legislation, you have participated in a "matter," and you are prohibited from representing any person, before any public agency, including the General Assembly, on the legislation or resulting statutes. Even though the matter was related to pending legislation, your participation was not the "proposal, consideration, or enactment" of a statute. If your work on pending legislation, as a Deputy Director, is limited to testifying before the General Assembly on the legislation, your participation is limited to the "proposal, consideration, or enactment" of the statute. In that case, you are not prohibited from representing any person, before any public agency, on the legislation or resulting statutes.

### **The Revolving Door Prohibition—R.C. 102.03(A)(1)**

R.C. 102.03(A), the "Revolving Door" prohibition of the Ohio Ethics Law, imposes restrictions upon the ability of public officials and employees to represent a party or act in a representative capacity for any person while in public service or for twelve months after leaving their public position. R.C. 102.03(A)(1) provides:

No present or former public official or employee shall, during 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 the public official or employee 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.

The term "public official or employee" is defined, for purposes of R.C. 102.03, to include any person who is appointed to an office, or is an employee, of any public agency. See R.C. 102.01(B) and (C). Any employee of a state Department, including a Deputy Director, is a "public official or employee" subject to the prohibitions of R.C. 102.03(A)(1). You will be subject to the prohibition imposed by R.C. 102.03(A)(1) during your public employment and for one year after you leave the Department.

The term “represent” is defined in R.C. 102.03(A)(5) to include “any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person.” (Emphasis added.) See Ohio Ethics Commission Advisory Opinion No. 86-001. Activity that would fall within this definition would include an appearance in a formal proceeding or meeting and informal “lobbying” of state personnel by telephone or in person. Id. Also included is the preparation of any written communication that is submitted to a public agency, including formal documents, filings, informal letters, notes, and e-mails, regardless of whether the public official signs the communication. Adv. Ops. No. 87-001 and 92-005.

The prohibition in R.C. 102.03(A) applies to any “matter” in which the public official or employee personally participated. The term “matter” is defined in R.C. 102.03(A)(5) to include “any case, proceeding, application, determination, issue, or question.” In Advisory Opinion No. 99-001, the Ethics Commission explained the term “matter” as follows:

“Matter” includes such concrete items as a specific occurrence or problem requiring discussion, decision, research, or investigation, a lawsuit or legal proceedings, an oral or written application, and a settlement of a dispute or question. “Matter” also includes such abstract items as a dispute of special or public importance and a controversy submitted for consideration. It is also apparent, however, that the term “matter” cannot be interpreted so broadly as to include a general subject matter.

In your situation, the term “matter” includes any activity in which you personally participated while performing your duties as Deputy Director of a Department through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion pertaining to the operation of the Department including work involving the Department’s budget and fiscal operations and administration of the Department’s programs. In Advisory Opinion No. 91-009, the Ethics Commission determined that a public official has personally participated in a matter if he exercised “supervision or general oversight” over other personnel in their work on that matter, because supervision of a public official’s or employee’s activities involves approval, disapproval, the rendering of advice, recommendation, and other substantial exercise of administrative discretion. See also Adv. Op. No. 92-005. Therefore, as a Deputy Director of the Department, you have personally participated in any matter in which the person holding the position of Deputy Director is authorized or required to act, including supervision or oversight of other Department officials and employees.

For twelve months after leaving public service, R.C. 102.03(A) prohibits a former public official or employee from representing any person on a matter in which he personally participated, before any public agency, and not just before the agency with which he was previously employed. Adv. Ops. No. 86-001 and 87-001. The term “person,” for purposes of R.C. 102.03 (A)( 1), includes governmental agencies, individuals, corporations, business trusts, estates, trusts, partnerships, and associations. See R.C. 1.59(C); Adv. Ops. No. 82-002 and 89-003. A “public agency” is defined in R.C. 102.01(C) 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.”

The twelve-month, post-employment restriction set forth in R.C. 102.03(A)(1) commences on the date you leave your position with the Department. Adv. Ops. No. 81-002, 86-001, and 89-003. R.C. 102.03(A)(1) prohibits you, for a period of one year from the date you resign from your position as Deputy Director of the Department, from representing any person before any state or local agency in Ohio, including the General Assembly, on any matter in which you personally participated while you were Deputy Director of the Department. Adv. Ops. No. 91-009 and 92-005. Note that you are barred from representing any person, regardless of whether the person was a party to the specific matter at the time you personally participated in the matter as an employee of the Department. R.C. 102.03(A)(1) does not prohibit you from representing a party before any state and local agency in Ohio on wholly new matters that arose after you resigned from your position as Deputy Director of the Department or on matters in which you did not personally participate or exercise supervision or general oversight as Deputy Director.

In the instant situation, if you have personally participated as the Department’s Deputy Director in matters pertaining to the operation of the Department including work involving the Department’s budget and fiscal operations and administration of the Department’s programs, and reviewing, drafting, or other activity related to legislation before the General Assembly, the legislation will not be considered to be a new matter for purposes of R.C. 102.03(A)(1). Therefore, for one year from the date you leave your position as Deputy Director, you are prohibited from representing any person, before any public agency including the General Assembly, on matters related to the legislation or resulting statutes.

**Exception Provided by R.C. 102.03(A)(5)**

R.C. 102.03(A)(5) provides a limited exception to the prohibition imposed by R.C. 102.03(A)(1) for specified issues pertaining to legislation, reading in pertinent part:

As used in divisions (A)(1), (2), and (3) of this section, “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. (Emphasis added).

Thus, R.C. 102.03(A)(5) provides an exception to the term “matter” for “the proposal, consideration, or enactment of statutes.” Referring to the exception, the Commission stated: “The general rule of construction is that an exception in a statute is an affirmation of the application of its provisions to all cases not excepted, and excludes all other exceptions.” Adv. Op. No. 75-014. When rendering opinions, the Ethics Commission is guided by the language in the statutes. See Adv. Op. No. 74-001.

The General Assembly did not craft the exception in R.C. 102.03(A)(5) to exclude all activities related to statutes. Rather, it limited the exception to the “proposal, consideration, or enactment” of statutes. Therefore, it becomes necessary to determine the activity that the General Assembly intended to exempt from the prohibition by its use of the words “proposal, consideration, or enactment.”

The words “proposal, consideration, or enactment” are not defined for purposes of R.C. 102.03(A)(1). The Ethics Commission has followed the rules of statutory construction that 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. (1949), 151 Ohio St. 212, 216: “[W]ords of a statute must be given their common, ordinary and accepted meaning in the connection in which they are used.”

The *Random House Webster’s Unabridged Dictionary* defines “proposal” as “the act of offering or suggesting something for acceptance, adoption, or performance.” *Random House Webster’s Unabridged Dictionary* 1551 (2d ed., 1997). “Consideration” is defined as “the act of considering; careful thought; mediation,” and, more specifically, “the hearing of a case by a tribunal.” *Id.* at 434. Finally, the same dictionary defines “enactment” as “the act of enacting,” and “enact” as “to make into an act or statute.” *Id.* at 639.

The exception in R.C. 102.03(A)(5) has been a part of the Ohio Ethics Law since it was enacted in 1974. In Am. Sub. H.B. 492 (Eff. May 12, 1994), the 120<sup>th</sup> General Assembly enacted a new revolving door restriction specifically for members and employees of the General Assembly. See R.C. 102.03(A)(4). At that time, the General Assembly also amended the definition of “matter,” set forth in R.C. 102.03(A)(5). For the new legislative revolving door restriction in R.C. 102.03(A)(4), the General Assembly *included* the proposal, consideration, and enactment of statutes, rules, ordinances, resolutions, or charter or constitutions amendments within the definition of “matter.” However, the General Assembly did not revise the definition of “matter” for other public officials or employees. By making these revisions, the General Assembly indicated that that legislators and legislative employees are engaged in the proposal, consideration, or enactment of the proposal, consideration, and enactment of statutes, rules, ordinances, resolutions, or charter or constitutions amendments, and that the revolving door law should include those kinds of matters.

These activities are generally the province of the legislative branch, rather than the executive branch. A Deputy Director of a Department is involved in the operation of the Department. You have explained that you are involved in directing the Department’s budget and fiscal operations and you have duties related to the administration of the Department’s programs. As a part of your authority, you review, draft, and perform other administrative activities, and are called to testify, on legislation before the General Assembly related to the Department’s authority and programs.

While your work as a Deputy Director involves personal participation in this activity, your work is fundamentally different from suggesting statutes for adoption or participating in the deliberative legal process that would result in their enactment. Though the pending legislation on which you work will be considered by the General Assembly, you do not propose, consider, or enact the bill. Therefore, the exception provided by R.C. 102.03(A)(5) does not apply.

However, if your participation in a pending bill is limited to testimony before the General Assembly on the bill, and you have not personally participated in any other way related to the bill or the Department's affected authority or programs, you are participating in the "proposal, consideration, or enactment" of the statute. In that case, the exception provided in R.C. 102.03(A)(5) would apply and you are not prohibited from representing any person, before any public agency, on the legislation or resulting statutes.

**Exception Provided by R.C. 102.03(A)(6)**

There is another exception to the prohibition imposed by R.C. 102.03(A)(1) in R.C. 102.03(A)(6), which reads as follows:

Nothing contained in division (A) of this section 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 the public official or employee was employed or on which the public official or employee served.

The exemption provided by R.C. 102.03(A)(6) applies only where the former public official or employee is retained or employed by the specific public agency by which he was previously employed, and does not apply to situations where he is representing an entity he did not serve in his public capacity. Adv. Op. No. 91-009. In Advisory Opinion No. 91-009, the Ethics Commission explained the exemption provided by R.C. 102.03(A)(6):

A former public official or employee has presumably developed an expertise and familiarity regarding the functioning and mandate of the specific public agency by which he was employed and may be able to serve the needs of that public agency more efficiently and capably than someone who does not have the same expertise. The policy underlying the exemption . . . is that it may serve the overall public good for a public agency to be able to avail itself of this expertise developed by a former employee or official during his employment or service with that particular public agency. . . . The policy imperative, however, extends only to the public agency by which the individual was employed, or with which he served. (Emphasis added.)

Therefore, if the Department were to ask you to represent its interests in interactions with the General Assembly on pending legislation, the exception in R.C. 102.03(A)(1) would apply, even if you personally participated in administrative activity related to the pending legislation.

### **Conclusion**

As explained more fully above, R.C. 102.03(A)(1) prohibits a former Department Deputy Director, for twelve months after he leaves his state position, from representing any person, before any public agency, on any matter in which he personally participated as Deputy Director. However, the term “matter” does not include the “proposal, consideration, or enactment” of statutes or rules.

If, while you were Deputy Director, you personally participated in reviewing, drafting, or other administrative activity on pending legislation affecting the Department, you personally participated in a “matter” because your work was not the “proposal, consideration, or enactment” of a statute. You are prohibited from representing any person, before any public agency, on all matters in which you personally participated, including matters related to legislation if they are not the proposal, consideration, or enactment of the legislation.

If your work on pending legislation, as a Deputy Director, was limited to testifying before the General Assembly on the legislation, your participation was limited to the “proposal, consideration, or enactment” of the statute. In that case, you are not prohibited from representing any person, before any public agency, on the legislation or resulting statutes.

This advisory opinion is based on the facts presented. It is limited to questions arising under Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code, and does not purport to interpret other laws or rules.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that: (1) Division (A)(1) of Section 102.03 of the Revised Code prohibits a former Deputy Director of a state Department from representing any person, before any public agency, on any “matter” in which he personally participated as Deputy Director, including a matter that involves pending legislation affecting the Department’s authority or programs; (2) For purposes of Division (A)(1) of Section 102.03 of the Revised Code, a “matter” includes any case, proceeding, application, determination, issue, or question, but does not include the “proposal, consideration, or enactment” of statutes or rules; (3) When a Deputy Director of a state Department is involved in reviewing, drafting, or other administrative activity related to a pending bill, the Deputy Director has personally participated in a “matter” and is not the “proposal, consideration, or enactment” of a statute; and (4) When a Deputy Director of a state Department has testified before the General Assembly on a pending bill, but has not taken other actions related to the bill or the Department’s authority or programs that will be affected by the bill, the Deputy Director has not personally participated in a matter because his testimony on the bill is part of the “proposal, consideration, or enactment” of a statute.



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Merom Brachman, Chair  
Ohio Ethics Commission