

OHIO ETHICS COMMISSION

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David E. Freel, *Executive Director*

INFORMATION SHEET: ADVISORY OPINION NO. 2007-03 **STATE BOARD MEMBER PAID FOR SERVICES BEFORE STATE AGENCIES**

What is the question addressed in the opinion?

Can members of state boards or commissions be paid to perform services on matters before their own boards or commissions? What about matters before other state agencies?

What is the answer in the opinion?

No. R.C. 102.04(A) prohibits any member of a state board or commission from accepting compensation, from any person, for services he or she is personally performing on a matter before the board or commission he or she serves. If the matter is before any state agency *other than* the one the board or commission member serves, he or she may be able to meet an exception in the law. R.C. 102.04(D) provides that, if the matter is before a different state agency, a state board or commission member can meet the exception by filing a statement disclosing his or her activities. The board or commission member must also refrain from participating in matters before the state agency he or she serves that affect officials or employees of the other state agency.

What is the purpose of answering the question in an advisory opinion?

Some members of state boards and commissions are asked to represent clients or perform work on matters that are before state agencies. For example, lawyers, architects, engineers, lobbyists, consultants, and other professionals may either appear on behalf of clients, or perform work for clients, on matters that are before state agencies.

To whom do the conclusions in this opinion apply?

While the opinion specifically involves board or commission members, the conclusions apply to any state official or employee who may personally render services on matters before state agencies. The exception does not apply to elected officials.

How and when did the opinion become effective?

The opinion became effective 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. 2007-03 IS ATTACHED.**

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Advisory Opinion
Number 2007-03
September 26, 2007

Syllabus by the Commission:

- (1) R.C. 102.04(A) prohibits a member of a state board or commission from receiving compensation for services he or she performs personally on a matter that is *before the board or commission on which he or she serves*;
- (2) R.C. 102.04(A) prohibits a member of a state board of commission from receiving compensation for services he or she performs personally on a matter that is before a state agency *other than* the one he or she serves *unless*, before rendering the services, he or she files the statement described in the exception;
- (3) In the statement, the board or commission member must declare that he or she will not participate in any matter before the board or commission involving any official or employee of the state agency where the matter on which he or she personally renders services is pending;
- (4) This restriction applies to all state officials or employees, including all members of state boards and commissions. A comparable restriction applies to local public officials and employees.

* * * *

The Ohio Ethics Commission has been asked whether the Ohio Ethics Law and related statutes prohibit a member of a state board or commission (“board”) from receiving compensation to perform services on matters pending before other state boards, commissions, or agencies.

Brief Answer

R.C. 102.04(A) prohibits a member of a state board from receiving compensation for services he or she seeks to perform personally on matters *before the board he or she serves*. However, an exception in R.C. 102.04(D) allows a board member to be paid to perform services personally on a matter *before an agency other than* the board he or she serves, as long as all of the requirements of the exception can be met.

Board Members Representing Clients before State Agencies—R.C. 102.04(A)

Ohio's Ethics Law includes restrictions on state board members receiving compensation to represent clients before state agencies. R.C. 102.04(A). R.C. 102.04(A) provides that, unless he or she can meet the exception in R.C. 102.04(D), no person elected or appointed to an office of, or employed by, any agency of the state shall:

[R]eceive 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 that is before the general assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts.

A state board member is "appointed to an office" of the state and subject to this restriction. R.C. 102.01(B) and (C); Ohio Ethics Commission Advisory Opinion No. 93-010. "Compensation" is defined as "money, thing of value, or financial benefit," and would include salary, payments, and other benefits from clients, customers, or others. R.C. 102.01(A); Adv. Op. No. 92-006.

Personally rendering services includes, but is not limited to, representing, advising, preparing non-ministerial documents for, or consulting with, any person. Adv. Op. No. 75-006. Examples are: (1) negotiating or discussing matters with agency personnel or contractors; (2) appearing at an agency meeting or hearing; and (3) preparing pleadings or documents to be filed with or submitted to an agency. Adv. Op. No. 87-009. A person would be personally rendering services if he or she prepared and submitted, to a state agency, any grant or investment proposals, contract bid packages, responses to requests for proposals, or any other submission for financial support for a client or customer.¹ Individual board members who would be subject to the restriction in R.C. 102.04(A) include, but are not limited to, those who are also attorneys, engineers, architects, consultants, and lobbyists.

A matter is "before" a state agency when it is "being considered by, decided by, or in the presence of or under the official purview of" the state agency. Adv. Op. No. 76-009. See also Adv. Ops. No. 75-006 and 92-006. The prohibition of R.C. 102.04(A) applies even if the affected public official is not appearing before the agency on the matter. Adv. Op. No. 75-025.

The prohibition is intended to serve the public interest in effective, objective, and impartial government by prohibiting a state official or employee from using the influence of his or her position on behalf of clients. Adv. Ops. No. 89-014, 90-012, and 90-002. All public officials and employees must accept necessary restrictions to avoid any likely interference with the responsibilities of the public positions they hold. See Adv. Ops. No. 89-010 and 90-012.

¹ However, the law specifically provides that the performance of *ministerial functions* are not prohibited by R.C. 102.04(A), including, but not limited to: the filing, or amendment of tax returns, applications for permits and licenses, incorporation papers, and other documents. R.C. 102.04(F).

Application of Restriction and Exception

In effect, R.C. 102.04(A) prohibits a member of a state board from receiving compensation for activities such as making an appearance, preparing filings or other documents for, or personally performing any other services on any matter that is being considered or adjudicated by *any* state agency, *unless* the board member meets the statutory exception in R.C. 102.04(D).² For example, an Ohio Dietetics Board member who is a lawyer is prohibited from receiving compensation for personally representing clients on matters before the Ohio Civil Rights Commission, the Ohio Bureau of Workers' Compensation, or the Ohio Industrial Commission. Adv. Op. No. 93-010.

R.C. 102.04(D) provides an exception to this prohibition for board members who are not elected.³ There are two elements to the exception:

- (1) The matter on which the board member is rendering services is pending before an agency *other than* the one with which he serves; and
- (2) Prior to rendering the services, the board member files a statement with: (a) the board on which he or she serves ("Agency A"); (b) the state agency before which the matter is pending ("Agency B"); and (c) the Ohio Ethics Commission.⁴

The board member must file a statement for each year he or she is rendering services on matters before the board. Adv. Op. No. 93-010.

On the statement, the board member must declare that he or she will not participate as a board member in any matter before Agency A if the matter involves an official or employee of Agency B. Adv. Op. No. 92-006. The board member is not required to withdraw from matters that affect Agency B as a whole or classes of employees from Agency B. Adv. Op. No. 89-006. The disqualification requirement will remain in place for two years from the date of the most recently filed statement. Adv. Op. No. 93-010. R.C. 102.04(E) prohibits any person who files, or is required to file, the statement from failing to disqualify himself or herself from matters before the board that affect officials or employees of the agency handling the matter on which he or she is performing services. Both R.C. 102.04(A) and 102.04(E) are first-degree misdemeanors. R.C. 102.03(F).

² R.C. 102.04(A) does not apply to services provided on matters before state courts.

³ For example, R.C. 102.04(D) would not apply to the members of the state Board of Education who are elected.

⁴ The board or commission member must disclose: (a) his or her name and address; (b) the names and addresses of the two public agencies involved; and (c) a brief description of the pending matter and the services that he or she will render personally. R.C. 102.04 (D)(2). The form is available on the Ohio Ethics Commission Web site.

By removing a state board member who is being paid to provide services in a private capacity on matters before another state agency from considering issues affecting personnel of the other agency, the General Assembly has significantly reduced the likelihood that the board member can use his or her public position to secure benefits for a client. The requirement in the exception protects against the improper use of influence.

For example, a person appointed to the State Personnel Board of Review (SPBR) who wants to be paid to provide services personally on matters pending before the Medical Board is required to file the R.C. 102.04(D) statement with SPBR, the Medical Board, and the Ethics Commission. If a matter involving any official or employee of the Medical Board were to come before SPBR, the affected board member would be required to disqualify himself or herself from that matter.

Application of the Restriction

While this opinion considers the application of R.C. 102.04 to state board members, the statute and this opinion apply to any non-elected state official or employee. For example, R.C. 102.04(A) prohibits an employee of the Department of Commerce from receiving compensation from anyone other than the Department to personally render lobbying services before the General Assembly, unless he or she is able to meet the exception in R.C. 102.04(D). The exception does not apply to elected state officials.

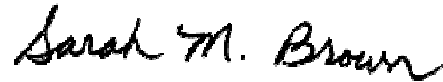
There is also a comparable provision that applies to officials and employees of local public agencies. R.C. 102.04(C). An official or employee of a local public agency is prohibited from receiving compensation for services on matters before the agency, unless the official or employee can meet the R.C. 102.04(D) exception. For example, R.C. 102.04(C) prohibits an architect who serves as a member of a city commission from receiving compensation for services on matters before any board, commission, or other agency of the city. Adv. Op. No. 96-002. If the matter is pending before a city agency other than the commission on which the architect serves, he or she can meet the exception by filing the statement and disqualifying from matters affecting personnel of the other agency.⁵

The application of this advisory opinion is based on the facts. 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 opinion of the Ohio Ethics Commission, and you are so advised, that: (1) R.C. 102.04(A) prohibits a member of a state board or commission from receiving compensation for services he or she performs personally on a matter that is *before the board or commission on which he or she serves*; (2) R.C. 102.04(A) prohibits a member of a state board of commission from receiving compensation for services he or she performs personally on a matter that is before a state agency *other than* the one he or she serves *unless*, before rendering

⁵ The exception does not apply to elected local officials.

the services, he or she files the statement described in the exception; (3) In the statement, the board or commission member must declare that he or she will not participate in any matter before the board or commission involving any official or employee of the state agency where the matter on which he or she personally renders services is pending; and (4) This restriction applies to all state officials or employees, including all members of state boards and commissions. A comparable restriction applies to local public officials and employees.

A handwritten signature in black ink that reads "Sarah M. Brown". The signature is written in a cursive style with a horizontal line underneath it.

Sarah M. Brown, Chairman
Ohio Ethics Commission