



OHIO ETHICS COMMISSION

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Advisory Opinion No. 77-005

July 20, 1977

Syllabus by the Ohio Ethics Commission:

Section 102.03 (D) of the Revised Code does not prohibit a state university faculty member, whose position does not involve the performance of or authority to perform administrative or supervisory functions, from participating in a seminar conducted by a private corporation under the name and in the facilities of the university.

Section 102.04 (A) of the Revised Code does not prohibit a state university faculty member from participating in a seminar conducted by a private corporation under the name and in the facilities of the university.

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In your request for an Ohio Ethics Commission Advisory Opinion, you asked whether the Ohio Ethics Law prohibits a state university faculty member from participating in a seminar conducted by a private corporation under the name and in the facilities of the university.

You state, by way of history, that the state university by which you are employed is considering a contract with a company that conducts seminars on educational testing, under which the company would promote a seminar in the name of the university and conduct the seminar on the university campus. The company would pay all of the expenses of the seminar, including a fee to university faculty members who participate in the seminar. The proposed agreement between the university and the company includes the following language: "Seminar faculty members will be mutually determined by the company and the university on a course-by-course basis. Faculty may be drawn from university resources, through the company, or in combination." Any excess of registration fees over expenses would be shared equally by the company and the university. You ask whether the participation of a state university faculty member in such seminars would violate the Ohio Ethics Law.

The prohibitions of Chapter 102. of the Revised Code, the Ohio Ethics Law, apply generally to any "public official or employee" or "any person elected or appointed to an office of or employed by the . . . state . . . (or) . . . a county, township, municipal corporation, or any other governmental entity, excluding the courts." Section 102.01 (B) of the Revised Code defines a "public official or employee as any person who is elected or appointed to an office or is an employee of any public agency." (emphasis added) Section 102.01 (C) of the Revised Code defines "public agency" to include an "institution . . . of the state," such as a state university. However, Section 102.01 (B) provides that the term "'public official or employee' does not include a person who is a teacher, instructor, professor, or any other kind of educator whose position does not involve the performance of, or authority to perform, administrative or supervisory functions." Therefore, a state university faculty member whose position does not

involve administrative or supervisory functions is not a "public official or employee" for purposes of the Ohio Ethics Law. Conversely, a state university faculty member whose position does involve performance of, or authority to perform, administrative or supervisory functions, such as a department head, dean, or person of equivalent rank, is a "public official or employee," and therefore within the jurisdiction of the Ohio Ethics Law.

Section 102.03 (D) 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."

This provision prohibits a state university faculty member whose position involves administrative or supervisory functions from using or attempting to use his official position to secure something of value for himself: 1) that would not ordinarily accrue to him in the performance of his duties; and 2) that is of such character as to manifest a substantial and improper influence upon him with respect to his duties. If, in the instant case: 1) a state university administrative faculty member used or attempted to use his position to secure an appointment as a seminar faculty member; 2) the position would not ordinarily accrue to him in the performance of his duties; and 3) his participation in the seminars amounted to a substantial and improper influence upon him with respect to his duties, then he would be in violation of Section 102.03 (D) of the Revised Code. Such a violation would be possible in this case since the seminar faculty are to be selected jointly by the corporation and the university, and an administrative faculty member assigned to participate in the selection process could use his position to secure a seminar faculty appointment for himself. However, in your request for an advisory opinion, you noted that no administrative faculty members are involved in this seminar. Therefore, there is no violation of Section 102.03 (D) of the Revised Code in the instant case.

Section 102.04 (A) of the Revised Code provides:

"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, commissioner 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)

Section 102.04 of the Revised Code applies to any 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." (emphasis added) Since the term "public official or employee" is not used, the exclusion of nonadministrative faculty discussed above in reference to Section 102.03 (D) of the Revised Code does not apply to Section 102-04. Section 102.04 (A) of the Revised Code applies to any person "employed by . . . any . . . institution. . of the state," including both regular and administrative faculty. Therefore, Section 102.04 (A) prohibits a state university faculty member

or administrator from receiving or agreeing to receive, directly or indirectly, compensation, other than from the university, for any service rendered or to be rendered personally in a case, proceeding, application, or other matter which is "before" the General Assembly or any state department, agency, or institution, including the university by which he is employed. Thus, it is necessary to determine whether participation in a seminar conducted by a private corporation is a case, proceeding, application, or other matter which is "before" the university.

In Advisory Opinion No. 75-006, the Ohio Ethics Commission determined that:

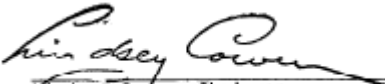
"The term 'before' as used in Section 102.04 of the Revised Code is defined as 'being considered, judged, or decided by' in Webster's New World Dictionary. Black's (Law Dictionary) defines 'before' as 'in the presence of; under the official purview of.' Therefore, a 'matter' which is being considered by, judged by, decided by, in the presence of, or under the official purview of, is 'before' a governmental entity. The prohibition on receipt of compensation for personally rendering service in a case, proceeding, application, or other matter does not apply until the matter is before an agency of a governmental entity."

As defined in Advisory Opinion No. 75-006 and subsequent opinions, the term "before" contemplates the use of discretion by the agency before which a matter is pending to arrive at some type of judgment or decision. A seminar conducted by a private corporation under the name and in the facilities of a state university is not a matter being considered, judged, or decided by the university, and thus not a matter "before" the university. Thus, Section 102.04 (A) of the Revised Code does not apply in the instant case.

We conclude, therefore, that Section 102.04 (A) of the Revised Code does not prohibit a state university faculty member from participating in a seminar conducted by a private corporation under the name and in the facilities of the university.

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 and rules.

The conclusions of this advisory opinion are based upon an examination of the facts and circumstances of the instant case as you have presented them. Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that: 1) Section 102.03 (D) of the Revised Code does not prohibit a state university faculty member whose position does not involve the performance of, or authority to perform, administrative or supervisory functions, from participating in a seminar conducted by a private corporation under the name and in the facilities of the university; and 2) Section 102.04 (A) of the Revised Code does not prohibit a state university faculty member from participating in a seminar conducted by a private corporation under the name and in the facilities of the university.


Lindsey Cowen, Chairman
OHIO ETHICS COMMISSION