



OHIO ETHICS COMMISSION

150 EAST BROAD STREET
COLUMBUS 43215
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Advisory Opinion No. 78-007
September 28, 1978

Syllabus by the Commission:

1) Division (A) of Section 102.04 of the Revised Code prohibits a person appointed to a state commission from receiving compensation, directly or indirectly, other than from the commission 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, except the courts.

2) Division (D) of Section 102.04 of the Revised Code establishes an exemption from the prohibitions of Division (A) that is available to a person appointed to a state commission if both of the following apply:

a) The agency before which the matter that involves the rendering of his services is pending is an agency other than the one with which he serves; and

b) Prior to rendering the services, the public official files a statement with the commission with which *** he serves and the agency before which the matter is pending:

i) identifying the agencies involved;

ii) describing the matter involved and the services to be rendered; and

iii) including a statement of disqualification for two years from official involvement with officials or employees of the agency before which the matter is pending.

***This requirement was amended by Am. S.B. 425 of the 113th General Assembly to require that a copy of the statement be filed with the Ohio Ethics Commission as well as the agencies involved.

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In your request for an Ohio Ethics Commission Advisory Opinion, you asked whether the enclosed statement of disqualification meets the criteria of Division (D) of Section 102.04 of the Revised Code.

You state, by way of history, that you are employed as the director of legislative services for a statewide business association, and in that capacity appear before the legislature. You were recently appointed to the Ohio Turnpike Commission, and you have prepared a proposed disqualification statement under Division (D) of Section 102.04 of the Revised Code, as follows:

"PROPOSED DISQUALIFICATION STATEMENT

This statement is being filed as provided in division (D) of Sec. 102.04 of the Ohio Revised Code. I am (name and address of official omitted), and I am a member of the Ohio Turnpike Commission, 682 Prospect Street, Berea, Ohio.

My appearance before the (state department, division, institution, instrumentality, board, commission or bureau, or state legislative body) is on behalf of my employer, (name and address of employer omitted) and relates the following pending matter (description of pending matter).

I hereby disqualify myself for a period of two years of the date of this statement from any participation as a member of the Ohio Turnpike Commission in any matter involving any public official or employee of the agency before which the present matter is pending."

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. . . appointed to an office of . . . any . . . commission . . . of the state,. . . 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."

As a member of the Ohio Turnpike Commission, you are a "person. . .appointed to. . . (a) commission" of the state for purposes of this provision. Therefore, Division (A) of Section 102.04 of the Revised Code would prohibit you from receiving or agreeing to receive compensation, directly or indirectly, other than from the Ohio Turnpike Commission, for any service rendered or to be rendered by you personally in any case, proceeding, application, or other matter which is before the General Assembly or any department or agency of the state, except the courts, unless the criteria for exemption of Division (D) of Section 102.04 of the Revised Code are satisfied.

Division (B) of Section 102.04 of the Revised Code provides:

"A public official who is appointed to a nonelective office or a public employee shall be exempted from division (A), (B), or (C) of this section if both of the following apply:

- (1) The agency to which the official or employee wants to sell the goods or services, or before which the matter that involves the rendering of his services is pending, is an agency other than the one with which he serves;
- (2) Prior to rendering the personal services or selling or agreeing to sell the goods or services, he files a statement with the public agency with which he serves and with the public agency before which the matter is pending or which is purchasing or has agreed to purchase goods or services.

The required statement shall contain the officials or employee's name and home address, the name and mailing address of the public agencies with which he serves and before which the matter is pending or which is purchasing or has agreed to purchase goods or services, and a brief description of the pending matter and of the personal services to be rendered or a brief description of the goods or services to be purchased. The statement shall also contain the public officials or employee's declaration that he disqualifies himself for a period of two years from any participation as such public official or employee in any matter involving any public official or employee of the agency before which the present matter is pending or to which goods or services are to be sold. The two-year period shall run from the date of the most recently filed statement regarding the agency before which the matter was pending or to which the goods or services were to be sold. No person shall be required to file statements under this division with the same public agency regarding a particular matter more than once in a calendar year."

The exemption of Division (D) of Section 102.04 of the Revised Code would apply to a member of the Ohio Turnpike Commission, a nonelected public official, if two criteria are met: 1) the agency before which the matter that involves the rendering of his services is pending is an agency other than the one with which he serves; and 2) the public official files the required statement prior to rendering the services. The statement must contain the following items: 1) the public officials name and home address; 2) the name and mailing address of the public agency with which he serves; 3) the name and mailing address of the public agency before which the matter is pending; 4) a brief description of the pending matter; 5) a brief description of the personal services to be rendered; and 6) the public officials declaration that he disqualifies himself for a period of two years from any official participation in any matter involving any public official or employee of the agency before which the matter is pending.

In the instant case, it appears that as a public official appointed to a nonelective office, you meet the criteria for the exemption, since: 1) the agency before which the matter that involves the rendering of your services is pending, the General Assembly, is an agency other than the one with which you serve, the Ohio Turnpike Commission; and 2) you have prepared the statement as required by Division (D) of Section 102.04 of the Revised Code. Your statement contains your name and home address, the name and mailing address of the public agency with which you serve, the Ohio Turnpike Commission, and the public agency before which the matter is pending, the Ohio General Assembly. The statement also includes a brief description of the pending matter, such as the legislation on which you will represent your employer. In addition, the statement contains the necessary disqualification from participation in matters involving officials or employees of the General Assembly.

However, the statement must also include a brief description of the personal services to be rendered. In the instant case, your services would include testimony at legislative hearings and meetings with individual legislators. If this item is completed, the statement would comply with the requirements of Division (D) of Section 102.04 of the Revised Code, and you would qualify for the exemption of that provision.

Your attention is directed to Division (E) of Section 102.04 of the Revised Code, which provides:

"No public official or employee who files a statement or is required to file a statement under division (D) of this section shall knowingly fail to disqualify himself from any participation as a public official or employee of the agency with which he serves in any matter involving any official or employee of an agency before which a matter for which he rendered personal services was pending . . ."

This provision emphasizes the disqualification outlined above.

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. The Ohio Ethics Commission cautions that its advisory opinions may be relied upon only with respect to questions arising under Chapter 102. or 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 (A) of Section 102.04 of the Revised Code prohibits a person appointed to a state commission from receiving compensation, directly or indirectly, other than from the commission 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, except the courts;
- 2) Division (,1) of Section 102.04 of the Revised Code establishes an exemption from the prohibitions of Division (A) that is available to a person appointed to a state commission if both of the following apply:
 - a) the agency before which the matter that involves the rendering of his services is pending is an agency other than the one with which he serves; and
 - b) prior to rendering the services, the public official files a statement with the commission with which he serves and the agency before which the matter is pending:
 - i) identifying the agencies involved;
 - ii) describing the matter involved and the services to be rendered; and
 - iii) including a statement of disqualification for two years from official involvement with officials or employees of the agency before which the matter is pending.


F. Herbert Hoffman, Jr.
Chairman - Ohio Ethics Commission

