



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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Advisory Opinion Number 82-002
March 4, 1982

Syllabus by the Commission:

- 1) Division (A) of Section 102.03 of the Revised Code prohibits a former examiner for the State Auditor's office from representing a city by which he is now employed, before the State Auditor's office, on any matter in which he personally participated while employed by the State Auditor.
- 2) Division (D) of Section 102.03 of the Revised Code prohibits an examiner employed by the State Auditor from seeking employment with a city during the course of his audit of that city.

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You asked: 1) whether the Ohio Ethics Law and related statutes, particularly Division (A) of Section 102.03 of the Revised Code, prohibit a former examiner for the State Auditor from accepting a position with a city which he audited; and 2) whether a state examiner may accept such a position during the course of an audit.

You stated, by way of history, that a state examiner employed by the Municipal Audits Division of the State Auditor's Office has been offered a position as finance director by a city which he previously audited. The former state examiner may be called upon to represent the city on matters involving the audit which he conducted. You stated further that state examiners are directly involved in the planning and execution of audits conducted by the State Auditor, and that their subsequent participation in the audit on behalf of a new employer could compromise the audit. In addition, you stated that it has been necessary to remove such examiners from audits, which extends the projected completion time and increases the cost of the audit. Finally, you asked whether the Ohio Ethics Law prohibits a state examiner from seeking employment with a governmental entity during the course of an audit.

Division (A) of Section 102.03 of the Revised Code, the "revolving door" prohibition of the Ohio Ethics Law, provides, in pertinent part:

No present or former public official or employee shall, during his 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. (emphasis added)

The 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 any 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 and 81-002).

In the instant case, an examiner employed by the State Auditor is a "public official or employee" as that term is defined in Division (B) of Section 102.01 of the Revised Code. A former state examiner is prohibited from representing a new employer, including a city, before the State Auditor or any other public agency, on any matter, including an audit, in which he personally participated as a state examiner. This prohibition remains in effect for one year after the former state examiner leaves office.

Division (A) of Section 102.03 of the Revised Code does not prohibit a former public employee from: 1) representing his new employer on new matters or matters in which he had not participated, 2) participating in legislative matters; 3) being retained or employed by his former employer; and 4) performing ministerial functions, such as filing tax returns and applications for permits or licenses.

Thus, Division (A) of Section 102.03 of the Revised Code would not, per se, prohibit a former state examiner from accepting a position with a governmental entity which he had audited. It would, however, prohibit him from representing his new public employer before the State Auditor's Office or any other public agency, on an audit or other matter in which he personally participated as a state employee.

In Advisory Opinion No. 77-003, the Commission concluded 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 from consideration of any matter involving any firm with which he has had contact regarding possible employment. Division (D) of Section 102.03 of the Revised Code prohibits a state examiner from seeking employment with a governmental entity during the course of his audit of that entity. Therefore, a state examiner who seeks employment with an auditee during the course of an audit should immediately remove himself from the audit.

The conclusions of this opinion are based on the facts presented and rendered only with regard to Chapter 102. and Section 2921.42 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 former state examiner for the State Auditor from representing a city by which he is now employed before the State Auditor's

Office on any matter in which he personally participated while employed by the State Auditor; and 2) Division (D) of Section 102.03 of the Revised Code prohibits an examiner employed by the State Auditor from seeking employment with a city during the course of his audit of that city.


MEROM BRACHMAN, CHAIRMAN
Ohio Ethics Commission