



## OHIO ETHICS COMMISSION

THE ATLAS BUILDING  
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Advisory Opinion No. 83-001  
January 13, 1983

Syllabus by the Commission:

- 1) Division (D) of Section 102.03 of the Revised Code prohibits a county engineer from reviewing a survey prepared by him or by other members of his firm that has been filed with an office of the county with which he serves.
- 2) Division (C) of Section 102.04 of the Revised Code does not prohibit a county engineer from receiving compensation for performing survey work for a private client as part of a real estate conveyance that is not part of a case, proceeding, application, or other matter before the county.

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You asked whether the Ohio Ethics Law and related statutes prohibit a county engineer from performing private surveys of real property that will be filed and recorded with the county as part of a conveyance.

You stated, by way of history, that you are a county engineer who also engages in private engineering work, including surveys of real property. The surveys appear on the face of a deed or in the form of a plat, and are filed with the county auditor's office. You stated further that the county auditor requires that such deeds and plats be submitted to the county engineer's office in order to identify the parcel for taxing purposes. You noted that the Ohio Ethics Law prohibits a county engineer from reviewing his own private engineering work, and from receiving compensation from private clients for engineering services provided in a case, proceeding, application, or other matter before the county engineer's office or any other office of the county (See: Ohio Ethics Commission Advisory Opinions No. 78-004, 79-007, and 82-001).

A county engineer is a "public official or employee" as defined in Division (B) of Section 102.01 of the Revised Code (See: Advisory Opinion No. 76-006). Division (D) of Section 102.03 of the Revised Code prohibits a public official or employee from using his official position to secure anything of value for himself that would not ordinarily accrue to him in the performance of his official duties, and that is of such character as to manifest a substantial and improper influence upon him with respect to his official duties. Prior Ohio Ethics Commission Advisory Opinions have held that an engineer's personal, pecuniary interest in client fees from private engineering work impairs his independence of judgment when reviewing work prepared by him or members of his firm. Thus, the Commission has held that Division (D) of Section 102.03 of the Revised Code prohibits a county or city engineer from reviewing his own work or the work of other members of his firm (See: Advisory Opinions No. 78-004, 79-007, and 82-001).

Division (C) of Section 102.04 of the Revised Code prohibits a public official or employee from receiving compensation, other than from his own agency, for personal services rendered in any case, proceeding, application, or other matter before the same entity of government with which he serves. Therefore, a county engineer is prohibited from receiving compensation from private clients for engineering services rendered in a case, proceeding, application or other matter before any office of the county government (See: Advisory Opinions No. 76-006, 78-004, 79-007, and 82-001). However, Division (F) of Section 102.04 of the Revised Code provides that the Section "shall not be construed to prohibit the performance of ministerial functions including, but not limited to, the filing, or amendment of tax returns, applications for permits and licenses, incorporation papers, and other documents."

There are numerous statutory provisions that set forth the requirements for deeds, conveyances, and encumbrances. Sections 319.20 and 317.22 of the Revised Code define the duties of the county auditor and the county recorder in conveyances of real property and the recording of deeds. Although the courts of this state have recognized a few exceptions, the general rule has long been that the function of the county auditor and recorder in conveyances is ministerial and that these county officials do not pass on the validity or legal sufficiency of a conveyance or deed (See: 1980 O.A.G. No. 29 and 1982 O.A.G. No. 72).

A deed submitted to a county auditor pursuant to Section 319.20 of the Revised Code is not part of a "case, proceeding, application, or other matter" before the auditor or recorder because the auditor and recorder have been given no discretion as to whether to transfer the property and indorse the deed. Instead, the statutes place mandatory duties upon the auditor and recorder to perform these duties. The auditor and recorder may refuse to perform these mandatory duties only when they are unable to identify the land conveyed.

Thus, in light of the "ministerial function" exemption in Division (F) of Section 102.04 of the Revised Code, a county engineer may perform surveys which will be filed and recorded with the county as part of a real estate conveyance. However, Division (F) of Section 102.04 of the Revised Code, does not affect the application of Division (D) of Section 102.03 of the Revised Code. The latter provision prohibits a county engineer from reviewing his own work. Thus, where a county requires submission of a deed to the county engineer's office prior to transfer to determine if the deed identifies the property sufficiently to locate it on the tax lists and maps, such a determination cannot be made by the engineer or employees under his supervision. The auditor must arrange for an individual with sufficient expertise and independence of judgment to conduct such reviews.

Furthermore, a county engineer is prohibited from engaging in private survey work if such work is part of a plat for the subdivision of land which will be submitted for the approval of the board of county commissioners, the county planning commission, or the regional planning commission. According to Chapter 711. of the Revised Code, a plat for the subdivision of land outside a municipal corporation may not be recorded until approval from one of the aforementioned authorities is obtained. The statutes specifically provide for a proceeding before these entities, with notice and the right to appeal to the court of common pleas. Therefore, submission of such a plat to the appropriate county agency is part of a "case, proceeding, application, or other matter before the county," as that phrase is defined in Division (C) of

Section 102.04 of the Revised Code. A county engineer, thus, is precluded from receiving compensation, other than from the county, for services rendered in such a proceeding.

The conclusions of this opinion are based on the facts presented, and are rendered only with regard to questions arising under 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 (D) of Section 102.03 of the Revised Code prohibits a county engineer from reviewing a survey prepared by him or by other members of his firm that has been filed with an office of the county with which he serves; and (2) Division (C) of Section 102.04 of the Revised Code does not prohibit a county engineer from receiving compensation for performing survey work for a private client as part of a real estate conveyance that is not part of a case, proceeding, application, or other matter before the county.

  
MEROM BRACHMAN, Chairman  
Ohio Ethics Commission