



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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Advisory Opinion No. 84-012
October 11, 1984

Syllabus by the Commission:

Division (D) of Section 102.03 of the Revised Code prohibits a service forester employed by the Division of Forestry of the Department of Natural Resources, who owns a tree service company, from soliciting or receiving fees for services rendered on a project on which he provides, or is required to provide, technical assistance or advice in his official capacity.

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You asked whether the Ohio Ethics Law and related statutes prohibit a service forester with the Division of Forestry of the Department of Natural Resources from engaging in the private ownership and operation of a tree service company within his district.

You stated, by way of history, that the Division of Forestry in the Department of Natural Resources (hereinafter Department) has the statutory responsibility for managing, protecting, and enhancing forest lands within the state. This responsibility is not limited to state-owned lands, but also includes the duty to provide technical and educational assistance to the general public and private woodland owners. Consequently, service foresters are employed by the Department to provide rural and urban landowners with technical assistance on tree planting, timber stand improvement, harvesting and utilization, disease and pest control, and other general maintenance, such as pruning and tree removal. You stated further that the service forester in question is assigned to a district by the Department, and operates a private tree service company within the district. You indicated that he serves on a community tree commission that is responsible for the maintenance of community trees, including pruning, fertilizing, tree removal, and tree planting. You asked whether he is prohibited from engaging in the tree service business in his district.

Division (D) of Section 102.03 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.

The elements of Division (D) of Section 102.03 of the Revised Code are: (1) a public official or employee; (2) is prohibited from using or attempting to use his official position; (3) to secure anything of value for himself; (4) the thing of value would not ordinarily accrue to him in

the performance of his official duties; and (5) the thing of value is of such character as to manifest a substantial and improper influence upon him with respect to his duties.

A service forester employed by the Division of Forestry of the Department of Natural Resources is a "public official or employee" as defined in Division (B) of Section 102.01 of the Revised Code. The payment of fees to his tree service company is within the definition of "anything of value" in Section 1.03 of the Revised Code. Such fees would not ordinarily accrue to a service forester in the performance of his official duties. Thus, the crucial issue is whether the fees received from the tree service business operating in the district would have a substantial and improper influence on the service forester with respect to his official duties.

In past advisory opinions, the Commission has held that Division (D) of Section 102.03 of the Revised Code prohibits a public official or employee from soliciting or receiving consulting fees, honoraria, conference registration fees, travel expenses, and other things of value from parties that are interested in matters before, regulated by, or doing or seeking to do business with the agency with which he serves (See: Ohio Ethics Commission Advisory Opinions No. 79-002, 79-006, 80-004 and 84-010). In addition, Advisory Opinion No. 83-007 held that inspectors and employees of the Board of Cosmetology are prohibited from selling cosmetology products to salons that they inspect or otherwise regulate. The reasoning of these opinions was that the receipt of valuable things, including payments or fees for services rendered, could impair the independence of judgment of the public official or employee while he is engaged in his official duties, and affect subsequent decisions by the public official or employee in matters involving the party from whom the gift, payment, or fee was received.

Under the facts presented, the service forester's official duties include rendering advice or recommendations to the general public and private woodland owners on tree maintenance. He also operates a tree service company in his district that offers many of the services he may recommend as a service forester. The fees received for tree maintenance services would have a substantial and improper influence upon him with respect to his official duties as a service forester if his tree service company were to do work that he recommends in his official capacity. Thus, the service forester is prohibited by Division (D) of Section 102.03 of the Revised Code from soliciting or receiving fees for tree services rendered on a project on which he provides, or is required to provide, technical assistance or advice as a service forester. Specifically, the service forester may not: 1) use state time, resources, or facilities to operate the company or solicit business; 2) receive compensation for services on projects that he has recommended in his official capacity; 3) render advice for a fee that is his duty to provide as a state employee, or 4) refrain from rendering advice or recommendations or otherwise performing his official duties in order to secure business for his tree service company.

Division (D) of Section 102.03 of the Revised Code does not, per se, prohibit the service forester from operating a private tree service company. For example, a service forester may operate his private business outside his district, and there may be projects within his district that are not within his jurisdiction. However, Division (D) of Section 102.03 of the Revised Code conditions or restricts his activities, as described above. In addition, the service forester may be subject to Department administrative policies or procedures with respect to such an arrangement.

This advisory opinion is based on the facts presented, and is limited 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 Division (D) of Section 102.03 of the Revised Code prohibits a service forester employed by the Division of Forestry of the Department of Natural Resources, who owns a tree service company, from soliciting or receiving fees for services rendered on a project on which he provides, or is required to provide, technical assistance or advice in his official capacity.



Richard D. Jackson, Chairman
OHIO ETHICS COMMISSION