



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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Advisory Opinion Number 85-013
December 2, 1985

Syllabus by the Commission:

(1) Division (D) of Section 102.03 of the Revised Code prohibits a radio technician employed by the Division of Wildlife of the Department of Natural Resources from soliciting or receiving additional payments or fees for radio repair services that he provides, or is required to provide, in his official capacity.

(2) Division (A)(1) of Section 2921.42 of the Revised Code prohibits a radio technician employed by the Division of Wildlife of the Department of Natural Resources from knowingly authorizing or otherwise using the authority or influence of his office to secure approval of a contract with the Department to provide radio repair services in his private capacity.

(3) Division (A)(4) of Section 2921.42 of the Revised Code prohibits a radio technician employed by the Division of Wildlife of the Department of Natural Resources from knowingly having an interest in the profits or benefits of a public contract to provide radio repair services for the Department with which he serves.

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You asked whether the Ohio Ethics Law and related statutes prohibit a radio technician employed by the Division of Wildlife of the Department of Natural Resources from selling radio repair services to the agency with which he serves, if such work is required in his official capacity. You also asked whether these statutes prohibit him from also serving as a radio technician with a municipality.

You stated, by way of history, that the Division of Wildlife of the Department of Natural Resources (hereinafter Department) employs law enforcement officers who are known as game protectors. You stated further that these game protectors use short-wave radios, some of which possess a sheriff's band frequency, in addition to their departmental radio units. You indicated that these short-wave radios are placed in state-owned vehicles, although not all of them are purchased by the state. For example, some of the radios have been purchased by individual game protectors and others have been donated to the state by conservation organizations. You asked whether a radio technician would be prohibited from selling the radio repair services in his private capacity, or from also being employed by a municipality as a radio technician.

Division (D) of Section 102.03 of the Revised Code provides the following:

No public official 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.

A radio technician employed by the Division of Wildlife 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, since he is an employee of an agency of the state. Payments or fees made to a radio technician operating a private radio repair business are within the definition of "anything of value" in Section 1.03 of the Revised Code. Such payments or fees would not ordinarily accrue to the radio technician in the performance of his official duties. Thus, the crucial issue is whether the payments or fees received from his private radio repair business would be of such character as to manifest a substantial and improper influence upon him with respect to his official duties.

In Ohio Ethics Commission Advisory Opinion No. 84-012, the Commission held that Division (D) of Section 102.03 of the Revised Code prohibits a service forester employed by the Division of Forestry of the Department, who also owns a private tree service company, from soliciting or receiving fees for services rendered on a project in which he provides, or is required to provide, technical assistance or advice in his official capacity. Specifically, the service forester was prohibited from: (1) using state time, resources, or facilities to operate his private company or solicit business; (2) receiving outside compensation for services on projects that he has recommended in his official capacity; (3) rendering advice for a fee that is his duty to provide as a state employee; or (4) refraining from rendering advice or recommendations, or otherwise refraining from performing his official duties, in order to secure business for his private tree service company.

In the instant case, similar restrictions would apply, even though the payments or fees would be provided by the Department. First, the radio technician is prohibited from using state time, facilities, or resources to operate his private radio repair business. Second, he is prohibited from receiving payments or fees in his private capacity for radio repair services recommended in his official capacity. Third, assuming that the radios are state property and that his job description includes the repair of such equipment, he is prohibited from rendering radio repair services in his private capacity for a payment or fee, if it is his duty to provide such services as a salaried state employee. Fourth, he is prohibited from refraining from performing his official duties in order to secure private business for his firm. These restrictions would prevent the radio technician from using his official position to benefit his private business. Thus, Division (D) of Section 102.03 of the Revised Code prohibits a radio technician employed by the Division of Wildlife of the Department from soliciting or receiving fees for repair services which he provides, or is required to provide, in his official capacity.

Division (A) of Section 2921.42 of the Revised Code provides, in pertinent part:

(A) No public official shall knowingly do any of the following:

(1) Authorize, or employ the authority or influence of his office to secure authorization of any public contract in which he, a member of his family, or any of his business associates has an interest;

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(4) Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which he is connected.

A radio technician employed by the Department is a "public official" as defined in Division (A) of Section 2921.01 of the Revised Code, since he is an employee of the state. A contract for the purchase or acquisition of radio repair services by or for the use of the Department is a "public contract" as defined in Division (E)(1) of Section 2921.42 of the Revised Code. A radio technician who receives a payment or fee for performing such services in his private capacity would be interested in such a public contract. Therefore, Division (A)(1) of Section 2921.42 of the Revised Code prohibits a radio technician from knowingly authorizing or otherwise using the authority or influence of his office to secure approval of a contract with the Department to provide radio repair services in his private capacity. In addition, even if the radio technician does not authorize or otherwise use the authority or influence of his office to secure approval of the contract, he would have a prohibited interest in a public contract under Division (A)(4) of Section 2921.42 of the Revised Code, if he provided radio repair services to the Department, the agency with which he is connected.

Division (A) of Section 2921.43 of the Revised Code may apply to the facts presented. However, the application of this Section is within the jurisdiction of the Office of the Attorney General. In addition, the issue of whether a radio technician with the Department of Natural Resources also may hold a position with a municipality is a question of compatibility of public offices, which also is within the jurisdiction of the Office of the Attorney General.

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: (1) Division (D) of Section 102.03 of the Revised Code prohibits a radio technician employed by the Division of Wildlife of the Department of Natural Resources from soliciting or receiving additional payments or fees for radio repair services that he provides, or is required to provide, in his official capacity; (2) Division (A)(1) of Section 2921.42 of the Revised Code prohibits a radio technician employed by the Division of Wildlife of the Department of Natural Resources from knowingly authorizing or otherwise using the authority or influence of his office to secure approval of a contract with the Department to provide radio repair services in his private capacity; and (3) Division (A)(4) of Section 2921.42 of the Revised Code prohibits a radio technician employed by the Division of Wildlife of the Department of Natural Resources from knowingly having an interest in the profits or benefits of a public contract to provide radio repair services for the Department with which he serves.


Robert Y. Karpington, Chairman
OHIO ETHICS COMMISSION