



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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Advisory Opinion Number 85-014
December 2, 1985

Syllabus by the Commission:

(1) Division (D) of Section 102.03 of the Revised Code prohibits an employee of the Division of Geological Survey of the Department of Natural Resources from soliciting or receiving fees or payments from a private party for articles written as part of his official duties.

(2) Division (D) of Section 102.03 of the Revised Code does not, per se, prohibit an employee of the Division of Geological Survey of the Department of Natural Resources from soliciting or receiving fees or payments from a private party for articles written in his area of general expertise, provided that he does not:

(a) solicit or receive payments or fees from parties that are regulated by, doing business with, or interested in matters before the agency with which he serves;

(b) sell services or property that are his duty to provide as part of his official duties;

(c) use or disclose confidential information; or use state time, facilities, or resources to prepare the articles.

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You asked whether the Ohio Ethics Law and related statutes prohibit an employee of the Division of Geological Survey of the Department of Natural Resources from receiving payment from a third party for articles written as part of his official duties. You also asked whether these statutes prohibit him from selling articles written on his own time, but which concern areas in which he is involved professionally for the state.

You stated, by way of history, that an employee of the Division of Geological Survey in the Department of Natural Resources (hereinafter Department) writes articles for publication in periodicals as part of his official duties. One of these periodicals has offered to pay him a fee for the articles, which were previously published by the Department and are in the public domain. You stated further that this employee also sells articles written on his own time, but which concern areas with which he is involved professionally. You asked whether such activities would be prohibited.

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.

An employee of the Division of Geological Survey of the Department 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 a public agency. Fees or payments received from a publisher for written articles are within the definition of "anything of value" in Section 1.03 of the Revised Code. Such fees or payments would not ordinarily accrue to an employee of the Division of Geological Survey in the performance of his official duties. Thus, the crucial issue is whether the fees or payments received from the periodical would have a substantial and improper influence on him 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 Opinion No. 79-002, 79-006, 80-004 and 84-010). In addition, Advisory Opinion No. 84-012 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 from receiving fees for tree services rendered on a project in which he provides, or is required to provide, technical assistance or advice as a service forester. Specifically, the service forester was prohibited from: (1) using state time, resources, or facilities to operate a tree service 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 performing his official duties in order to secure business for his private tree service company.

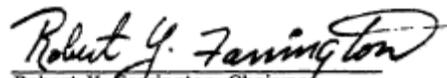
In the instant case, the employee of the Division of Geological Survey of the Department is required to write articles as part of his official duties. In addition, it appears that the articles are in the public domain, rather than copyrighted by the Department or the individual. Thus, Division (D) of Section 102.03 of the Revised Code would prohibit him from soliciting or receiving fees or payments from a private party for articles written in the performance of his official duties. However, Division (D) of Section 102.03 of the Revised Code does not, per se, prohibit the employee from soliciting or receiving fees or payments from a private party for articles written in his area of general expertise, provided that he does not: (1) solicit or receive payments or fees from parties that are regulated by, doing business with, or interested in matters before the agency with which he serves; (2) sell services or property that are his duty to provide as part of his official duties; (3) disclose confidential information (See: Division (B) of Section 102.03 of the Revised Code); and (4) use state time, facilities, or resources to prepare the articles.

Division (A) of Section 2921.43 may apply to the facts presented. However, the application of this Section is within the jurisdiction of Office of the Attorney General. In

addition, you may wish to consult that office concerning the application of copyright laws and other legal provisions regulating the ownership rights of intellectual property.

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 an employee of the Division of Geological Survey of the Department of Natural Resources from soliciting or receiving fees or payments from a private party for articles written as part of his official duties; and (2) Division (D) of Section 102.03 of the Revised Code does not, per @e, prohibit an employee of the Division of Geological Survey of the Department of Natural Resources from soliciting or receiving fees or payments from a private party for articles written in his area of general expertise, provided that he does not: (a) solicit or receive payments or fees from parties that are regulated by, doing business with, or interested in matters before the agency with which he serves; (b) sell services or property that are his duty to provide as part of his official duties; (c) use or disclose confidential information; or (d) use state time, facilities, or resources to prepare the articles.


Robert Y. Carrington, Chairman
OHIO ETHICS COMMISSION