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Advisory Opinion Number 99-001
February 19, 1999

Syllabus by the Commission:

(1) Division (A) of Section 102.03 of the Revised Code prohibits former county Child Support Enforcement Agency attorneys, for a period of one year from the date they left their employment with the county Child Support Enforcement Agency, from representing private clients, or any other party, before any public agency, on any "matter" in which they personally participated while they were employed by the county Child Support Enforcement Agency;

(2) The term "matter" is defined in Division (A)(5) of Section 102.03 of the Revised Code as "any case, proceeding, application, determination, issue, or question," and includes, but is not limited to, a specific occurrence or problem requiring discussion, decision, research, or investigation, a lawsuit or legal proceedings, an oral or written application, a settlement of a dispute or question, a dispute of special or public importance, and a controversy submitted for consideration;

(3) Former county Child Support Enforcement Agency attorneys would be prohibited from preparing pleadings, filings, or other documents for presentation or submission to a court or other public agency on a matter in which they personally participated as county Child Support Enforcement Agency attorneys, even if they do not sign the pleadings or documents, but they would not be prohibited from consulting with the attorneys who represent these clients, so long as they do not divulge confidential information;

(4) Division (B) of Section 102.03 of the Revised Code prohibits former county Child Support Enforcement Agency attorneys from disclosing or using, without appropriate authorization, any confidential information that they acquired in the course of their public service.

* * * * *

You asked about the post-employment restrictions that apply to former county Child Support Enforcement Agency attorneys. You stated that the county Child Support Enforcement Agency, ("CSEA"), periodically experiences turnover of its legal staff. You further stated that former CSEA attorneys enter private practice in the community and may represent individuals in child support cases involving the CSEA. Specifically, you asked, on behalf of the CSEA, whether R.C. 102.03 prohibits former CSEA attorneys from representing individuals in child

support cases involving the CSEA for a period of one year from the date they left government service.

As explained more fully below, the Ohio Ethics Law and related statutes prohibit former CSEA attorneys, for a period of one year from the date they left their employment with the CSEA, from representing private clients, or any other party, before any public agency, on any "matter" in which they personally participated while they were employed by the CSEA. "Matter" is defined to include any case, proceeding, application, determination, issue, or question. The Law also prohibits former CSEA attorneys from disclosing or using, without appropriate authorization, any confidential information that they acquired in the course of their public service.

The Revolving Door Prohibition-R.C. 102.03(A)

Division (A) of Section 102.03 of the Revised Code, the "Revolving Door" prohibition of the Ohio Ethics Law, imposes restrictions upon the ability of former public officials and employees to represent a client or act in a representative capacity for any person after leaving public service. R.C. 102.03(A)(1) provides:

No present or former public official or employee shall, during public 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 the public official or employee 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.

The Franklin County Court of Appeals upheld the "Revolving Door" prohibition as constitutional in State v. Nipps, 66 Ohio App. 2d 17 (1979). In upholding the statute, the Court explained:

R.C. §102.03(A), when read in context with the other subdivisions of R.C. §102.03, clearly indicates a legislative purpose to ensure that no public official or employee will engage in a conflict of interest or realize personal gain at public expense from the use of "inside" information. . . . The state has a substantial and compelling interest to restrict unethical practices of its employees and public officials not only for the internal integrity of the administration of government, but also for the purpose of maintaining public confidence in state and local government. Id. at 20-21.

The pertinent elements of the "Revolving Door" prohibition 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; (3) before any 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. 86-001, 91-009, and 92-005.

R.C. 102.01(B) and (C) define the term "public official or employee" to include any person who is elected or appointed to an office or is an employee of any agency of a county. A CSEA attorney is an employee of a county agency, and therefore a "public official or employee" subject to the statutory prohibitions of R.C. 102.03(A). See Adv. Op. No. 89-014. Accordingly, R.C. 102.03(A) prohibits former CSEA attorneys, for a period of one year from the date they left their employment with the CSEA, from representing a client, new employer, or any other party before any public agency, on any matter in which they personally participated while they were serving with the CSEA. See Adv. Ops. No. 91-009 and 92-005.

The term "represent" is defined in R.C. 102.03(A)(5) to include "any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person." Examples of the types of activities which would fall within the definition of the term "represent," for purposes of this section, were described by the Ethics Commission in Advisory Opinion No. 86-001:

[T]his would include activities ranging from an appearance on behalf of a private client in a formal proceeding or meeting to informal "lobbying" of agency personnel by telephone or in person. It also includes written communications ranging from formal documents and filings to informal letters and notes. Even if the attorney or consultant does not sign the documents, letters, or notes, the prohibition would apply if she prepared the communication. If she merely consulted with the attorneys or other personnel who prepared the documents, letters, or notes, the prohibition would not apply.

R.C. 102.03(A) prohibits a former public official or employee from "representing" a client, new employer, or any other party before any public agency on a matter in which he personally participated, and not just before the agency with which he was previously employed. See Adv. Ops. No. 86-001, 87-001, and 92-005. A "public agency" is defined in R.C. 102.01(C) to include "the general assembly, all courts, any department, division, institution, board, commission, authority, bureau or other instrumentality of the state, a county, city, village, township, and the five state retirement systems, or any other governmental entity." It is noted that the breadth of the application of R.C. 102.03(A) includes representation before the courts, in contrast to R.C. 102.04, which specifically excludes the courts from the prohibition. In the situation you describe, "public agency" would include the county court of common pleas, the municipal court, the CSEA, and all other public agencies.

A "person," for purposes of R.C. 102.03(A)(1), has been interpreted by the Commission to include governmental agencies, individuals, corporations, business trusts, estates, trusts, partnerships, and associations. See R.C. 1.59(C) and Adv. Ops. No. 82-002 and 89-003. In the situation that you describe, a private client of a former CSEA attorney would be a "person" for purposes of R.C. 102.03(A)(1).

R.C. 102.03(A) defines the term "matter" to include "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." (Emphasis added.) The term "matter" is broadly defined under R.C. 102.03(A) and includes any issue or

question, as well as particular cases, proceedings, applications, and determinations. See Adv. Ops. No. 91-009 and 92-005.

The terms "case," "proceeding," "application," "determination," "issue," and "question" are not defined for purposes of R.C. 102.03(A). A primary rule of statutory construction is that words used in a statute must be construed according to the rules of grammar and common usage. See R.C. 1.42. See also Dougherty v. Torrence, 2 Ohio St. 3d 69 (1982) (in interpreting a statute, effect must be given to words used, and words used may not be deleted). Furthermore, statutes "must be construed in the light of the mischief they are designed to combat." City of Mentor v. Giordano, 9 Ohio St. 2d 140, 144 (1967).

The first four terms in the definition of "matter" have fairly concrete meanings. Random House Webster's Unabridged Dictionary (2nd ed. 1997) defines the term "case" as "a specific occurrence or matter requiring discussion, decision, or investigation" or "a suit or action at law; cause." "Proceeding" is defined as "the instituting or carrying on of an action at law." Id. "Application" is defined as "a written or spoken request or appeal for employment, admission, help, funds, etc." or "a form to be filled out by an applicant." Id. The definition of "determination" includes "the act of coming to a decision or of fixing or settling a purpose," "ascertainment, as after observation or investigation," and "the settlement of a dispute, question, etc., as by authoritative decision." Id.

The last two terms, "issue" and "question," are broader and have more abstract meanings than the first four terms in the definition of "matter." "Issue" is defined as "a point, matter, or dispute, the decision of which is of special or public importance." Id. "Question" is defined as "a problem for discussion," "a subject of dispute or controversy," or "a controversy that is submitted to a judicial tribunal or administrative agency for decision." Id.

It is apparent from the above definitions that the term "matter" is broadly defined and encompasses many things. "Matter" includes such concrete items as a specific occurrence or problem requiring discussion, decision, research, or investigation, a lawsuit or legal proceedings, an oral or written application, and a settlement of a dispute or question. "Matter" also includes such abstract items as a dispute of special or public importance and a controversy submitted for consideration.

It is also apparent, however, that the term "matter" cannot be interpreted so broadly as to include a general subject matter. It is to be assumed that the Legislature used the language contained in a statute advisedly and intelligently and expressed its intent by the use of the words found in the statute. See Adv. Ops. No. 74-001 and 95-002. The Legislature could easily have used the term "subject matter," instead of "matter," if it intended such broad coverage. See Dougherty, supra, (in interpreting a statute, reference is made to the fact that if the Legislature intended a particular meaning, it could easily have found apt words or phrases to express that meaning). Thus, the Legislature did not intend the prohibition of R.C. 102.03(A) to be so broad as to encompass general subject matters. For this reason, former child support enforcement agency attorneys would not be prohibited from "representing" a party in a specific child support enforcement action because they previously participated in other child support enforcement actions as a public official or employee. However, they would be prohibited from "representing"

a party in a specific child enforcement action, or any other matter, in which they previously participated as a public official or employee.

R.C. 102.03(A) defines "personal participation" to include "decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion." In Advisory Opinion No. 91-009, the Ethics Commission held that "personal participation" in a matter also includes the exercise of "supervision or general oversight" over other personnel in their work on that matter, since supervision of a public official's or employee's activities involves decision-making, approval or disapproval, recommendation or advice, and other exercises of administrative discretion, by the supervisor, regarding that matter. See also Adv. Op. No. 86-001.

Application of the "Revolving Door" Restrictions

For each former CSEA attorney, the one-year, post-employment prohibition of R.C. 102.03(A) commences upon the date the attorney left public service. See Adv. Ops. No. 86-001 and 87-001. Therefore, R.C. 102.03(A) prohibits former CSEA attorneys, for a period of one year from the date they left their employment with the CSEA, from representing private clients or any other party, before any public agency, on any matter in which they personally participated while they were employed by the CSEA, regardless of when such personal participation occurred during their public service. See Adv. Ops. No. 89-003, 91-009, and 92-005.

Former CSEA attorneys may not, as private attorneys, or as members of private law firms, engage in any activities that would be deemed to constitute "representation" under R.C. 102.03(A), on any matter in which they personally participated as a public official or employee. As discussed above, "representation" is defined to include "any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person." They would, for example, be prohibited from preparing pleadings, filings, or other documents for presentation or submission to a court or other public agency on a matter in which they personally participated as CSEA attorneys, even if they do not sign the pleadings or documents. See Adv. Ops. No. 86-001 and 91-009. Former CSEA attorneys would also be prohibited from preparing reports or documents on their clients' behalf that will be submitted to a public agency, if these reports or documents deal with any matter in which they participated as public employees, even if other attorneys or the clients themselves actually submit these reports or documents. See Adv. Op. No. 91-003.

However, former CSEA attorneys would not be prohibited from consulting with the attorneys who represent the clients, to provide general assistance, so long as they do not divulge confidential information, as discussed below. See Adv. Ops. No. 86-001, 89-003, and 91-009. They would also not be prohibited from preparing reports or documents that will be submitted to a public agency on a new matter or a matter in which the attorneys did not participate as public employees. See Adv. Op. No. 91-003.

Former CSEA attorneys are not prohibited from representing their private clients or any other party before a public agency on new matters that do not involve questions or issues in which they have previously participated as CSEA attorneys, or other matters in which they did

not personally participate as a public official or employee. See Adv. Ops. No. 89-009, 91-009, and 92-005. They are also not prohibited from being retained or employed by the CSEA, or from performing ministerial functions, such as preparing tax returns and filing applications for permits and licenses. See Adv. Op. No. 82-002.

Disclosure of Confidential Information-R.C. 102.03(B)

Division (B) of Section 102.03 of the Revised Code reads as follows:

No present or former public official or employee shall disclose or use, without appropriate authorization, any information acquired by the public official or employee in the course of the public official's or employee's official duties that is confidential because of statutory provisions, or that has been clearly designated to the public official or employee as confidential when that confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary to the proper conduct of government business.

Pursuant to this section, former CSEA attorneys are prohibited from disclosing or using, without appropriate authorization, any confidential information that they acquired in the course of their official duties with the CSEA. The prohibition extends to potential and actual future employers and clients in the public and private sectors. See Adv. Ops. No. 91-009 and 92-005. No time limitation exists for this prohibition. Adv. Op. No. 88-009.

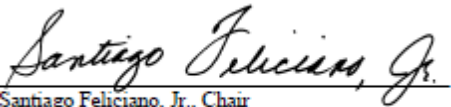
Post-Employment Restrictions Outside the Ethics Law

As noted at the outset of this opinion, the provisions of the Ohio Ethics Law are designed to protect the public and apply to all public officials and employees at the state and local level. The situation for which you seek an opinion also raises issues concerning the professional conduct of attorneys under the Code of Professional Responsibility. For example, lawyers who leave public service are bound by Disciplinary Rule 9-101(B), which provides: "A lawyer shall not accept private employment in a matter in which he had substantial responsibility while he was a public employee." This section may impose a broader prohibition than that discussed above with respect to the Ohio Ethics Law. These issues are not within the jurisdiction of the Ethics Commission. You may wish to seek advice from the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court.

This advisory opinion is based on the facts presented. It is limited to questions arising under Chapter 102. and Sections 2921.42, 2921.421, and 2921.43 of the Revised Code, and does not purport to interpret other laws or rules.

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 former county Child Support Enforcement Agency attorneys, for a period of one year from the date they left their employment with the county Child Support Enforcement Agency, from representing private clients, or any other party, before any public agency, on any "matter" in which they personally participated

while they were employed by the county Child Support Enforcement Agency; (2) The term "matter" is defined in Division (A)(5) of Section 102.03 of the Revised Code as "any case, proceeding, application, determination, issue, or question," and includes, but is not limited to, a specific occurrence or problem requiring discussion, decision, research, or investigation, a lawsuit or legal proceedings, an oral or written application, a settlement of a dispute or question, a dispute of special or public importance, and a controversy submitted for consideration; (3) Former county Child Support Enforcement Agency attorneys would be prohibited from preparing pleadings, filings, or other documents for presentation or submission to a court or other public agency on a matter in which they personally participated as county Child Support Enforcement Agency attorneys, even if they do not sign the pleadings or documents, but they would not be prohibited from consulting with the attorneys who represent the clients, so long as they do not divulge confidential information; and (4) Division (B) of Section 102.03 of the Revised Code prohibits former county Child Support Enforcement Agency attorneys from disclosing or using, without appropriate authorization, any confidential information that they acquired in the course of their public service.


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Ohio Ethics Commission