



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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Advisory Opinion
No. 75-030
November 5, 1975

Syllabus by the Ohio Ethics Commission:

A person may serve as a city councilman and as a volunteer fireman of the same city and receive compensation for rendering services in both positions without violating the prohibitions of Section 102.04(B) of the Revised Code.

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Your request for an advisory opinion asks whether a person, who is a member of a city council, may receive compensation for services he renders as a city volunteer fireman if he does not vote on any legislation relevant to the volunteer fire department.

You state that the fire department is composed of volunteers who receive an hourly wage for fighting fires within the city and attending training sessions. The salaries are set by council upon the recommendation of the mayor. The charter of the city provides that the mayor is also a member of city council. You add that in the past members of council, who are also volunteer firemen, have abstained from voting on any legislation relevant to the fire department and have foregone pay as firemen.

The first issue is whether the persons in question are subject to Section 102.04(B) of the Revised Code which provides:

"No person who is elected or appointed to an office of or employed by a county, township, municipal corporation, or any other governmental entity, excluding the courts, shall receive or agree to receive directly or indirectly compensation other than from the agency with which he serves for any service rendered or to be rendered by him personally in any case, proceeding, application or other matter which is before any agency, department, board, bureau, commission, or other instrumentality, excluding the courts, of the entity of which he is an officer or employee." (Emphasis added)

It is obvious from the above cited statute that a person who is elected to an office of a "municipal corporation" falls within the purview of Section 102.04(B) of the Revised Code.

A volunteer fireman, who is compensated, is more difficult to classify with regard to Section 102.04(B) of the Revised Code. Such a person may be either an employee or an independent contractor. Your correspondence does not give sufficient information to make the determination. If he is an independent contractor, he would be outside the purview of the section, since the Ohio Ethics Commission, in Advisory Opinion No. 75-012, determined that the term "employed by", as used in Section 102.04 of the Revised Code, does not comprehend those who are independent contractors.

However, the question is moot, since as either an employee or an independent contractor, a volunteer fireman may receive compensation while also serving as a council member, without violating Section 102.04(B) of the Revised Code. This result derives from the phrase "other than from the agency with which he serves" which appears in both divisions

(A) and (B) of Section 102.04 of the Revised Code. Earlier Advisory Opinions of the Ohio Ethics Commission have interpreted the phrase as it is used in Division (A) of Section 102.04 of the Revised Code; the interpretation for Division (B) is necessarily the same since the phrase appears in that division in the exact same form.

In Advisory Opinion No. 75-010, the Ohio Ethics Commission interprets the phrase "other than from the agency with which he serves" in regard to receipt of compensation and finds that the word agency can be read in the singular or plural, by virtue of Section 1.43 of the Revised Code. Section 1.43 of the Revised Code states that "the singular includes the plural and the plural includes the singular." Thus, "agency" means agencies as well. Therefore, Section 102.04 of the Revised Code does not prohibit receipt of compensation from more than one agency of the same governmental entity.

Thus, it is not necessary to make the determination of whether a volunteer fireman for a city is an employee or an independent contractor since in either classification receipt of compensation is not prohibited. An independent contractor would be outside the purview of the section. A person who is receiving compensation as an employee of the volunteer fire department and as a member of city council would be receiving compensation from two agencies of the same entity, the city, and such receipt is not prohibited.

The Advisory Opinion should not be construed to contradict or contravene opinions of the Attorney General of Ohio on the compatibility of public offices.

The Ohio Ethics Commission directs your attention to Section 102.03(D) of the Revised Code which prohibits misuse of official authority for personal benefit:

"No public official or employee shall use or attempt to use his official position to secure any valuable thing or valuable benefit for himself that would not ordinarily accrue to him in the performance of his official duties, which thing or benefit is of such character as to manifest a substantial and improper influence upon him with respect to his duties."

The Ohio Ethics Commission brings this section to your attention and suggests that councilmen who also serve as volunteer firemen scrutinize this section and their conduct very closely. The Ohio Ethics Commission commends members of council, who also serve as volunteer firemen, for abstaining from voting on matters which would directly benefit them in their role as firemen for the city. Such abstention removes the appearance of impropriety and enhances public confidence in the city council.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that a person may serve as a city councilman and as a volunteer fireman of the same city and receive compensation for rendering services in both positions without violating the prohibitions of Section 102.04(B) of the Revised Code.