

OHIO ETHICS COMMISSION

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December 15, 2000 Informal Opinion 2000-INF-1215-1

Douglas App



Richard Marinucci



Dear Mr. App and Mr. Marinucci:

In your letter to the Ethics Commission, you ask whether the Ohio Ethics Law and related statutes prohibit you, as employees of the Ohio Department of Transportation (ODOT), from operating a private outside business in the outdoor advertising industry in light of the fact that a section of ODOT, the Advertising Device Control Section (ADC), regulates some outdoor advertising sites.

Facts

You state that Mr. App is employed as a Realty Specialist for the Ohio Department of Transportation (ODOT) and has held that position for five years. Until May 21, 1999, Mr. App served with ADC. Mr. App is now employed with the Division of Planning. Mr. App's current duties involve historical research and compilation of a statewide chart of paving condition ratings of routes.

You state that Mr. Marinucci is a Realty Specialist II for ODOT and has held that position for five years. Until March 2, 1999, Mr. Marinucci served with ADC. Mr. Marinucci is now employed with the Division of Real Estate Acquisition Support Section. Mr. Marinucci's current duties involve the acquisition by ODOT of federal, state, and railroad properties.

You propose to operate a private outside business in the outdoor advertising industry. You state that the proposed business would secure leases from private property owners and would apply for, and receive permits for, outdoor advertising devices from ADC and local agencies. Your proposed business may include selling these leases, permits, and advertising devices to individuals and companies.

You state that approximately 1/3 of the state, U.S., and interstate highways in Ohio are subject to ADC. ADC issues permits based upon the restrictions imposed by R.C. Section 5516. You state that municipal, county, or township permits may be required in areas outside of ADC's jurisdiction.

You state that you will not conduct private business activities during regular working hours. You also state that you will not represent yourselves as ODOT employees while conducting your private outside business. Finally, you state that you do not expect your ODOT employment to result in the receipt of preferential treatment for either yourselves or your clients.

Brief Answer

As explained below, several provisions of the Ohio Ethics law and related statutes prohibit you from engaging in private business activity that would be regulated by the ADC section of ODOT, unless your supervisors and ODOT chief counsel determine that, within your respective positions, you are capable of withdrawing from consideration of matters that could pose a conflict of interest. Your respective ODOT supervisors in the sections with which you are both employed and ODOT chief counsel must review and approve the proposed outside business activity to determine whether it is likely that you can remove yourselves from any potential conflict with your business or the interests of your clients before ODOT.

In instances where it would be necessary for you, in your proposed private business, to apply for and receive permits for outdoor advertising devices from ODOT, R.C. 102.04(A) prohibits you from receiving compensation for performing services for clients in matters pending before ODOT unless the compensation is received for the performance of ministerial functions. Finally, if the duties you would perform, in the proposed private business, would involve representing your business or any other party before any public agency in the State of Ohio on a matter that either of you personally participated in your capacity as state employees, then the one of you who personally participated in the matter would be prohibited from making such representation while employed by ODOT and for one year from the date of leaving state employment.

Conflict of Interest Prohibitions—R.C. 102.03(D) and (E)

Your attention is directed to R.C. 102.03(D) and (E), which provide:

- (D) No public official or employee shall use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

- (E) No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

An ODOT employee is a "public official or employee" and is subject to the prohibitions of R.C. 102.03(D) and (E).

The term "anything of value" is defined for purposes of R.C. 102.03 in R.C. 1.03 to include money and every other thing of value. R.C. 1.03, 102.01(G); Ohio Ethics Commission Advisory Opinions No. 82-002 and 89-003. The earnings that you would receive from a private business in the outdoor advertising industry would constitute a thing of value for purposes of R.C. 102.03(D) and (E).

General Restrictions Upon Outside Private Business Activity

The Ethics Commission has held that the Ohio Ethics Law does not prohibit a public official or employee from engaging in private business activity so long as no actual conflict of interest exists between the official's or employee's public and private positions. Adv. Op. No. 96-004. There are, however, situations where a public official's or employee's private business interests could be of such a character as to manifest a substantial and improper influence upon the public official or employee with regard to his official decisions and responsibilities. In such situations, R.C. 102.03(D) and (E) prohibit the public official or employee from engaging in the private outside business activity. *Id.* See also Adv. Ops. No. 77-006, 84-009, and 86-008.

In 1996, the Ethics Commission issued a comprehensive opinion, detailing the application of the conflict of interest law to outside employment situations. A copy of Advisory Opinion No. 96-004, which more fully explains the outside employment restrictions, is enclosed. This opinion will discuss specific aspects of that opinion that are relevant to your situation.

Prohibitions Imposed By R.C. 102.03(D)

Division (D) of Section 102.03 of the Revised Code prohibits a public official or employee from using the authority or influence of his position to secure anything of value for himself, family members, business associates, or others where there is a conflict of interest. Adv. Ops. No. 79-002, 80-004, and 89-006. The application of the prohibition of R.C. 102.03(D) is dependent upon the facts and circumstances of each individual situation. Adv. Op. No. 87-008. As explained below, Division (D) prohibits any action or inaction by a public official or employee that would result in securing a substantial and improper thing of value.

Generally, the Ethics Commission has held that compensation secured by a public official or employee while engaging in private outside employment or business activity is a thing of value that can be of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to his duties. The Commission has reasoned that the public

interest could be adversely affected when a public servant receives compensation for private activities if the compensation is paid as a result of the public servant's use of, or failure to exercise, his official authority, or if the receipt of compensation could impair the performance of public duties and therefore burden public resources entrusted to the public servant in favor of his own personal financial interests.

The Commission has therefore reasoned that a public official or employee who is engaged in a private business is prohibited from: (a) using public time, facilities, personnel, or resources in conducting the business, including using public equipment to conduct demonstrations for clients; (b) using his official title or identification on private business cards or other written materials; (c) using his relationship with other public officials and employees to secure a favorable decision or action by the other officials or employees regarding his private interests; (d) discussing, deliberating, or voting on any matter involving his private business; (e) receiving fees for providing services rendered on projects that he has recommended in his official capacity; (f) participating in decisions or recommendations regarding his competitors; and (g) using his public position or authority in any other way to secure a benefit for his outside employer or private business. Adv. Op. No. 84-013. See also Adv. Ops. No. 84-012, 85-013, 85-014, 90-003, and 90-009.

In addition to these restrictions, R.C. 102.03(E) places additional public interest controls upon the conflicts of interest inherent to all who engage in public service.

Prohibitions Imposed By R.C. 102.03(E)

R.C. 102.03(E) prohibits a public official from soliciting or accepting anything of value that would have an improper influence upon him with respect to his duties. Unlike R.C. 102.03(D), which prohibits a public official from acting to secure a thing of value, R.C. 102.03(E) prohibits a public official from merely accepting certain things of value even where the official takes no action to secure it.

A public official or employee is prohibited, by R.C. 102.03(E), from soliciting or accepting "anything of value" if the thing of value could have a substantial and improper influence upon the official or employee. The Ethics Commission has determined that outside business activity, and the payment received therefor, are "substantial" for purposes of this restriction. Adv. Op. No. 92-015.

In order to determine whether something of substantial value will also have an improper influence on a public official, the Ethics Commission has stated that the question turns on an examination of the source of the thing. The acceptance of certain things of value are improper because of the relationship between the public official or employee and the source of the thing of value. Adv. Ops. No. 86-011 and 92-015. The Commission has held that a public official's or employee's objectivity and independence of judgment with regard to his official actions could be impaired if he were to solicit or accept a thing of substantial value from a party that is interested in matters before, regulated by, or doing or seeking to do business with his own public agency. Adv. Ops. No. 87-006, 87-009, and 89-006. See also Adv. Ops. No. 87-008 and 90-004.

Therefore, R.C. 102.03(E) prohibits a public official or employee from engaging in private business activity with parties that are interested in matters before, regulated by, or doing or seeking to do business with his own agency. Adv. Op. No. 96-004.

In the instant situation, you wish to secure leases from private landowners and secure advertising permits from ADC, a division of ODOT. By securing a permit from the department with which you are employed your proposed private business would become a party that is interested in matters before or regulated by ADC. A state employee who owns a business that is interested in matters before or regulated by his employing state department has a potential conflict that is much more direct than if he were to secure a thing of value from a party that is interested in matters before, regulated by, or doing or seeking to do business with his department.

In applying the standard imposed by R.C. 102.03(E), the Ethics Commission has held that in certain situations, a public official or employee may withdraw from consideration of matters that could pose a conflict of interest. Adv. Ops. No. 89-006, 90-002, and 93-015. A public official's or employee's withdrawal from consideration of issues concerning parties who are interested in matters before, regulated by, or doing or seeking to do business with his own public agency may be accomplished only when such a withdrawal: (1) does not interfere with the official's or employee's performance of his assigned duties; and (2) is approved by his employing agency. Adv. Ops. No. 89-006, 89-010, and 90-002. See also Adv. Op. No. 90-010.

In the situation that you have described, if you wished to pursue business opportunities that would be subject to ADC regulation, then the prohibition imposed by R.C. 102.03(E) requires that each of you must be able to withdraw from any matters pending before ODOT that affect your proposed business or the interests of your clients. You are both required to withdraw, as ODOT employees, from all discussions and deliberations, formal and informal, with respect to your private business or issues before ODOT that affect the interests of your clients. R.C. 102.03(E) also prohibits you from soliciting as business clients any party who is doing or seeking to do business with, regulated by, or interested in matters before ODOT, unless you are capable of withdrawing from any participation in the matter.

Therefore, R.C. 102.03(E) prohibits you from engaging in private outside employment or business activity that would be subject to regulation by ODOT unless you are both capable of withdrawing from consideration of matters that could pose a conflict of interest. It may be possible that your assigned duties may not bring you into contact, as ODOT employees, with matters that are regulated by ADC or other divisions within ODOT. However, the supervisors of each of your respective ODOT sections and ODOT chief counsel must review the outside business activity that you propose and determine that, within your respective positions, you are capable of withdrawing from consideration of matters that could pose a conflict of interest in order to protect against any potential conflict that could impair the functioning of ODOT. In this regard, the language of the Ethics Commission in Advisory Opinion No 89-010 is pertinent:

An employee of an administrative department of the state owes his responsibility to the exercise of the public trust by performing the tasks assigned to him by his

employing agency. This duty must not be impaired by a public employee's concern for his own personal interests. . . . There may be instances where a state agency is willing to accommodate the personal interests of its employees . . . [however] [t]he state agency's determination whether such action is possible or desirable is a matter within the discretion of the affected agency.

For example, your supervisors and ODOT chief counsel must determine whether your withdraw from issues involving your proposed outside business activity or that of your clients could create hardship upon ODOT by restricting its ability to assign new duties to either of you, where the new duties could bring either of you into contact with those issues in the future. See Adv. Ops. No. 90-002 and 96-004. It must be noted that where the Ethics Commission has witnessed public officials and employees pursue extensive private business activities ignoring conflicts of interest created, it has been forced to pursue enforcement processes that can lead to criminal sanctions against the officials and employees.

An advisory opinion issued pursuant to R.C. 102.08 is based upon the facts presented and provides immunity to the person who is the subject of the opinion, and others similarly situated, from criminal prosecution, civil liability, and actions for removal from office provided that they comply with the conditions set forth in the opinion. However, an advisory opinion construing the Ohio Ethics Law and related statutes does not compel a public agency, under those statutes, to accommodate the private interests of the public official or employee. Adv. Op. No. 90-002.

In this instance, it is within the discretion of ODOT to review and approve the outside business activity that you propose to protect against any potential conflict with the functioning of ODOT. This opinion does not opine as to the requirements of matters beyond the authority of the Ethics Commission.

R.C. 102.04(A)—Representation of Parties Before State Agencies by a State Employee

As set forth above, the proposed private business would result in the necessity to secure permits from ADC, which is a section within ODOT. The issue of a state employee applying for and receiving permits from a state agency implicates the prohibition of R.C. 102.04(A), which reads:

Except as provided in division (D) of this section, no person elected or appointed to an office of or employed by the general assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, 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 that is before the general assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts.

R.C. 102.04(A) prohibits a state employee from receiving, directly or indirectly, "compensation" except from the agency that he serves, for personally rendering any service in any matter before the General Assembly or any other governmental entity of the state. In Advisory Opinion No. 74-001, the Ethics Commission explained that the legislative intent of R.C. 102.04 is to prevent abuse within the same level of government, "Section 102.04(A) comprehends the possibility of abuse within the state level." (Emphasis in original). See also Adv. Op. No. 93-010 (it is obvious that a state official or employee who provides services for compensation before state agencies may be able to wield the influence of his state office or employment to the benefit of his clients, and thus himself).

The term "compensation" is defined in R.C. 102.01(A) for purposes of R.C. 102.04 as "money, things of value, or financial benefit." The proceeds that would be received from the proposed outdoor advertising business would be compensation for purposes of R.C. 102.04(A). As employees of ODOT, you are each paid a statutorily established amount for your services. R.C. 102.04(A) prohibits you, as ODOT employees, from receiving "compensation" other than this statutorily established amount for personally rendering any service in any case, proceeding, application, or other matter that is before the General Assembly, or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts. The proceeds that each of you would derive as a result of securing advertising permits from ADC are compensation for purposes of R.C. 102.04(A). See generally Adv. Ops. No. 75-025 and 77-001.

The Ethics Commission has held that a matter is "before" a governmental entity "when it is being considered by, decided by, or in the presence of or under the official purview of" a governmental agency. Adv. Op. No. 76-009. See also Adv. Op. No. 75-025 (the prohibition of R.C. 102.04(A) applies when the "matter" is before the state agency, not merely when an affected person is before the agency; R.C. 102.04(A) prohibits an affected person from receiving compensation for services rendered by him personally in a matter that is before a state agency, even if he renders services from the confines of his office). The potential for abuse exists when a state employee desires to receive compensation from a client for rendering a service on a matter pending before his employing state agency. Adv. Op. No. 92-006.

As ODOT employees, you are persons employed by a department of the state and subject to the prohibition of R.C. 102.04(A). As stated above, in some instances, it would be necessary for your proposed private business to apply for and receive permits for outdoor advertising devices from ADC. Accordingly, R.C. 102.04(A) prohibits you from receiving compensation for rendering the services required in applying for and receiving permits from ADC or any state agency.

There are two exceptions to the prohibition imposed by Division (A). Those exceptions are set forth in R.C. 102.04(D) and (F). R.C. 102.04(D) provides an exception whenever the matter is pending before an agency other than the one the state employee serves and R.C. 102.04(F) provides an exception for receiving compensation for the performance of ministerial functions. The exception of Division (F) will be addressed first.

R.C. 102.04(F)—Ministerial Function Exception

R.C. 102.04(F) provides:

This section shall not be construed to prohibit the performance of ministerial functions including, but not limited to, the filing, or amendment of tax returns, applications for permits and licenses, incorporation papers, and other documents.

Division (F) provides an exception for state employees who would receive compensation for the performance of ministerial functions, including the filing of applications for permits and licenses. If the rendering of services for clients before ADC is limited to filing for permits, then the ministerial function exception of R.C. 102.04(F) would apply and, accordingly, R.C. 102.04(A) would not prohibit you from receiving compensation for this activity despite the fact that it is before a section of ODOT and that you are both ODOT employees.

If your rendering of services for your proposed business on matters before ADC entails activity beyond the mere filing for permits, then the ministerial function exception of R.C. 102.04(F) would not apply. See Adv. Op. No. 75-017 (a ministerial function is performed in a prescribed manner in obedience to legal authority without the exercise of personal judgment).

R.C. 102.04(D)—Outside Agency Exception

R.C. 102.04(D) provides an exception to the prohibition of R.C. 102.04(A) when the service rendered for a client before the state agency is not ministerial. R.C. 102.04(D) provides:

- (D) A public official who is appointed to a nonelective office or a public employee shall be exempted from division (A), (B), or (C) of this section if both of the following apply:
 - (1) The agency to which the official or employee wants to sell the goods or services, or before which the matter that involves the rendering of his services is pending, is an agency other than the one with which he serves;
 - (2) Prior to rendering the personal services or selling or agreeing to sell the goods or services, he files a statement with the appropriate ethics commission, with the public agency with which he serves, and with the public agency before which the matter is pending or that is purchasing or has agreed to purchase goods or services.

The required statement shall contain the official's or employee's name and home address, the name and mailing address of the public agencies with which he serves and before which the matter is pending or that is purchasing or has agreed to purchase goods or services, and a brief

description of the pending matter and of the personal services to be rendered or a brief description of the goods or services to be purchased. The statement shall also contain the public official's or employee's declaration that he disqualifies himself for a period of two years from any participation as such public official or employee in any matter involving any public official or employee of the agency before which the present matter is pending or to which goods or services are to be sold. The two-year period shall run from the date of the most recently filed statement regarding the agency before which the matter was pending or to which the goods or services were to be sold. No person shall be required to file statements under this division with the same public agency regarding a particular matter more than once in a calendar year.

- (E) No public official or employee who files a statement or is required to file a statement under division (D) of this section shall knowingly fail to disqualify himself from any participation as a public official or employee of the agency with which he serves in any matter involving any official or employee of an agency before which a matter for which he rendered personal services was pending or of a public agency that purchased or agreed to purchase goods or services.

In order to meet the exception provided by R.C. 102.04(D), two conditions must be met: (1) the state agency before which the state official or employee will render services is a state agency other than his own; and (2) prior to rendering the services, the official or employee must file a R.C. 102.04(D) Statement which describes the services to be rendered and other information.

A state official or employee who renders a service on a matter pending before a state agency other than his own must file the 102.04(D) Statement with: (1) the Ohio Ethics Commission; (2) his own public agency; and (3) the public agency before which the matter is pending. The official or employee must declare on his 102.04(D) Statement that he will disqualify himself, for a period of two years from the date the statement is filed, from participation as an official or employee in any matter involving any public official or employee of the public agency before which the matter is pending. Adv. Op. No. 92-006.

The issue is whether you are able to meet the exception provided by R.C. 102.04(D) to the prohibition against a state employee receiving compensation for rendering a service in a matter pending before his employing state agency.

Application of R.C. 102.04(D)

In the instant situation, the exemption provided by Division (D) of R.C. 102.04 is inapplicable.

One necessary element of the exemption is that the “agency . . . before which the matter that involves the rendering of his service is pending, is an agency other than the one with which he serves.” (Emphasis added). As stated above, Mr. App is employed as a Realty Specialist for ODOT and Mr. Marinucci is a Realty Specialist II for ODOT. As ODOT employees who desire to receive compensation for rendering services for clients in matters pending before ODOT—the same state department that you serve—the necessary requirement for the exemption of R.C. 102.04(D) cannot be met.

Therefore, R.C. 102.04(A) prohibits you from receiving compensation for performing services for clients in matters pending before ODOT unless, as explained above, the compensation is received for the performance of ministerial functions.

R.C. 102.04(A)—Rendering Services Before Municipalities, Counties, or Townships

You have stated that, in some instances, municipal, county, or township permits may be required in areas outside of ADC’s jurisdiction. As explained above, R.C. 102.04(A) addresses the issue of a state official or employee receiving “compensation” for personally rendering any service in any case, proceeding, application, or other matter that is before the General Assembly, or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts. (Emphasis added). The securing of permits from municipalities, counties, or townships would not be affected by the prohibition imposed by R.C. 102.04(A). Therefore, R.C. 102.04(A) does not prohibit you from securing permits from municipalities, counties, or townships.

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

R.C. 102.03(A) is also relevant to your question. 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 public officials and employees to represent a party or act in a representative capacity for any person while in 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. (Emphasis added.)

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.” The word “represent” includes an appearance in a formal proceeding or meeting, informal “lobbying” of agency personnel by telephone or in person, and written communications such as formal documents and informal letters and notes. Adv. Op. No. 86-001.

R.C. 102.03(A) prohibits a public official or employee from "representing" a client, new employer, or any other party, on a matter in which he personally participated, before any public agency, and not just before the agency with which he was previously employed. See Adv. Ops. No. 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."

Therefore, R.C. 102.03(A)(1) prohibits you, while employed by ODOT and for one year after leaving state employment, from representing your proposed business or any person before any public agency on any matters in which you personally participated. If the duties you would perform, in the proposed private business, would involve representing your business or any other party before any public agency in the state of Ohio on a matter that either of you personally participated in your capacity as state employees, then the one of you who personally participated in the matter would be prohibited from making such representation while employed by ODOT and for one year from the date of leaving state employment.

There is an exception to this restriction, set forth in R.C. 102.03(A)(6), as follows:

Nothing contained in division (A) of this section shall prohibit, during such period, a former public official or employee from being retained or employed to represent, assist, or act in a representative capacity for the public agency by which the public official or employee was employed or on which the public official or employee served.

This exemption applies only where the former public official or employee is retained or employed by the specific public agency by which he was previously employed, and does not apply to situations where he is representing an entity he did not serve in his public capacity. Adv. Op. No. 91-009. In Advisory Opinion No. 91-009, the Ethics Commission explained this exemption:

A former public official or employee has presumably developed an expertise and familiarity regarding the functioning and mandate of the specific public agency by which he was employed and may be able to serve the needs of that public agency more efficiently and capably than someone who does not have the same expertise. The policy underlying the exemption [in R.C. 102.03(A)(6)] . . . is that it may serve the overall public good for a public agency to be able to avail itself of this expertise developed by a former employee or official during his employment or service with that particular public agency. See generally Advisory Opinion No. 89-009. The policy imperative, however, extends only to the public agency by which the individual was employed, or with which he served. (Emphasis added.)

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The exception to R.C. 102.03(A) does not apply to you because the business that you have proposed would not be retained or employed to represent, assist, or act in a representative capacity for ODOT.

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, you are prohibited from disclosing or using, without appropriate authorization, any confidential information that was acquired as ODOT employees. No time limitation exists for this prohibition. Adv. Op. No. 88-009.

Conclusion

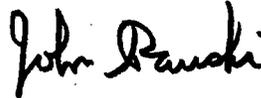
As explained above, several provisions of the Ohio Ethics law and related statutes prohibit you from engaging in private business activity that would be regulated by the ADC section of ODOT, unless your supervisors and ODOT chief counsel determine that, within your respective positions, you are capable of withdrawing from consideration of matters that could pose a conflict of interest. Your respective ODOT supervisors in the sections with which you are both employed and ODOT chief counsel must review and approve the proposed outside business activity to determine whether it is likely that you can remove yourselves from any potential conflict with your business or the interests of your clients before ODOT.

In instances where it would be necessary for you, in your proposed private business, to apply for and receive permits for outdoor advertising devices from ODOT, R.C. 102.04(A) prohibits you from receiving compensation for performing services for clients in matters pending before ODOT unless the compensation is received for the performance of ministerial functions. Finally, if the duties you would perform, in the proposed private business, would involve representing your business or any other party before any public agency in the State of Ohio on a matter that either of you personally participated in your capacity as state employees, then the one of you who personally participated in the matter would be prohibited from making such representation while employed by ODOT and for one year from the date of leaving state employment.

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The Ethics Commission approved this informal advisory opinion at its meeting on December 15, 2000. The opinion is based upon the facts presented and 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. If you have any further questions, please feel free to contact this Office again.

Very truly yours,



John Rawski
Staff Attorney

Enclosure

Advisory Opinion No. 96-004

cc: Gordon Proctor
Lisa Conomy