

OHIO ETHICS COMMISSION

Sarah M. Brown, *Chairman*
Robert Browning, *Vice Chairman*



8 East Long Street, 10th Floor
Columbus, Ohio 43215
Telephone: (614) 466-7090
Fax: (614) 466-8368
Web site: www.ethics.ohio.gov

David E. Freel, *Executive Director*

September 26, 2007

Informal Opinion 2007-INF-0926

Detective Jeff Stiers
Union County Sheriff's Office

Dear Detective Stiers:

On April 17, 2007, the Ohio Ethics Commission received your letter requesting an advisory opinion. In your letter, you explained that you and your partner, Kevin Weller, are criminal investigators for the Union County Sheriff's Office. For the past four years, you have also been employed by the Union County Coroner's Office to assist in death investigations when the coroner is out of town or unavailable. Your status with the coroner's office has recently been changed to "contract employees."

In a telephone conversation with Commission staff, you explained that, when you assist the coroner, you are basically "on-call" to investigate all cases that arise during the coroner's absence, including cases within the jurisdiction of the local police departments, the highway patrol, and the county sheriff. You indicated that how often you assist the coroner depends on the coroner's schedule. For example, you stated that last year you filled in for the coroner three or four times, once for a week, and the other times for the weekend. You indicated that a typical investigation may include, assessing the scene, taking notes, creating a log, and corresponding with the Licking County Morgue regarding an autopsy.

You explained that the sheriff's office and the coroner's office both arrive on the scene of a death within the county and may work together if there is a criminal case filed. You stated, however, that the coroner's and the sheriff's case work and reports are kept separate. You indicated that neither you nor your partner perform work for the coroner during your hours with the sheriff's office and that you would not work on the same cases for the coroner and the sheriff. You stated that there is currently one case that you investigated for the coroner that is pending with the sheriff's office. You asked if the Ethics Law and related statutes prohibit you and your partner from working for two elected officials within the same county.

Brief Answer

As explained more fully below, the Ethics Law and related statutes prohibit you from working for the county sheriff's office and the county coroner's office simultaneously.

Receiving Compensation for Performing Personal Services—R.C. 102.04(C)

R.C. 102.04(C) provides:

Except as provided in division (D) of this section, 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.

R.C. 102.04(C) prohibits you from appearing before or preparing or submitting documents or investigative reports to any other instrumentality of the county, on behalf of the coroner's office. See Ohio Ethics Commission Advisory Opinion No. 2004-03.

While R.C. 102.04(D) provides an exception to this prohibition in certain circumstances, the exception does not apply to services you render before your own public agency. R.C. 102.04(D).¹ R.C. 102.04(C) prohibits you from rendering services for the county coroner in cases that do or will involve the county sheriff's office. If any of the cases you cover for the county coroner were to be reviewed or investigated by the sheriff's office, or if the sheriff's office would be otherwise involved with the case, you would be unable to comply with R.C. 102.04(C).

As you have indicated, when you assist the coroner, you are required to investigate all cases that arise during his absence, including those within the county sheriff's jurisdiction. Therefore, it is impossible for you to know, before you start an investigation, what law enforcement agencies will be involved. Even where an agency other than the county sheriff's office is covering the case, the sheriff's office may be needed to assist with the investigation. Given the fact that at any time when you are filling in for the coroner you could be called to

¹The R.C. 102.04(D) exception applies to a state or local employee or appointed official if he can meet two requirements: (1) The agency before which he is rendering services is an agency other than the one with which he serves; and (2) Prior to rendering the personal services he files a statement with the Ethics Commission, with the public agency with which he serves, and with the public agency before which the matter is pending.

Detective Jeff Stiers
September 26, 2007
Page 3

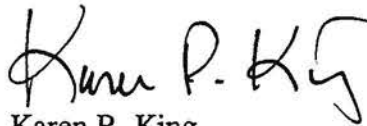
investigate a case in which the sheriff's office will also be involved, R.C. 102.04(C) prohibits you from working for the county sheriff's office and the county coroner simultaneously.²

Conclusion

As explained more fully above, the Ethics Law and related statutes prohibit you from working for the county sheriff's office and the county coroner's office simultaneously.³

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on September 26, 2007. The opinion is based on the facts presented. It is limited to questions arising under Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code and does not purport to interpret other laws or rules. If you have any questions or desire additional information, please feel free to contact this Office again.

Sincerely,



Karen R. King
Staff Advisory Attorney

Cc: Kevin Weller
David Phillips

² Your question also raises issues under public contract and conflict of interest prohibitions of the Ethics Law. R.C. 2921.42(A)(4) prohibits a county employee from having an interest in the profits or benefits of a public contract, which includes employment, entered into by any office of the county, unless he can meet an exception to the law. R.C. 102.03(D) and (E) prohibits a public official or employee from using his authority to secure, or from accepting, payments from an outside employer that are 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, unless he is able to fully withdraw from all matters before his employing agency that definitely and directly affect his outside employer. See also 1997 Att'y Gen. Op. No. 97-003 (the position of sheriff and the position of member of the county children services board are incompatible because of a conflict of interest). However, because the Commission has determined that you are prohibited under R.C. 102.04(C) from working for the coroner's office, it is not necessary for this opinion to discuss R.C. 2921.42(A)(4) or R.C. 102.03(D) and (E) further.

³ Based on your letter, you were providing services to both the county coroner and the county sheriff before you wrote our office for advice. The purpose of an Ethics Commission advisory opinion is to provide guidance to a public official or employee upon which he can rely before engaging in an action that may be prohibited by the Ethics law. The Commission has explained that its function in rendering an advisory opinion is not a fact-finding process. Adv. Op. No. 94-002. The Commission can render an advisory opinion only in response to a hypothetical question or a question that involves the prospective conduct of the person who requests the opinion. Adv. Ops. No. 75-037 and 94-002. Therefore, this advisory opinion addresses only the prospective matters you have described and does not reach any conclusions with respect to matters that have already occurred.