



OHIO ETHICS COMMISSION

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Note from the Ohio Ethics Commission:

Ohio Ethics Commission Advisory Opinion No. 74-004 - Determination that 1) members of a county board of elections are state officers, who are subject to R.C. 102.04(A) because they are appointed by the Secretary of State but are not county officers, who are subject to R.C. 102.04(C) and 2) established a test for when a person is “appointed to an office.”

1) Overruled by [Adv. Op. No. 93-004](#), which explains that for purposes of R.C. 102.04, a member of a county board of elections can be deemed to be both a state and county officer due to his unique position, and 2) Modified by [Adv. Op. No. 75-004](#), which determined that whether a person exercises “sovereign power” is an additional and essential criterion for determining if someone is “appointed to an office.”

For more information on Overruled and Obsolete Formal Advisory Opinions please see [Formal Advisory Opinions - OEC \(ohio.gov\)](#).

THIS COVER SHEET IS PROVIDED FOR INFORMATION PURPOSES. IT IS NOT AN ETHICS COMMISSION ADVISORY OPINION. ADVISORY OPINION NO. 74-004 IS ATTACHED.



OHIO ETHICS COMMISSION

150 EAST BROAD STREET

COLUMBUS 43215

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Advisory Opinion

No. 74-004

October 22, 1974

Syllabus by the Ohio Ethics Commission:

(1) Certain sections of Chapter 102 of the Revised Code apply to "public officials or employees" and other sections apply to "persons."

(2) Since the clause "who receives less than one thousand dollars per year for serving in such position," as used in Division (B) of Section 102.01 of the Revised Code, applies only to persons who are members of a board, commission or bureau of any county or city, village officials and employees are exempted from the definition of "public official or employee" regardless of the amount of compensation received for serving in such position.

(3) Village officials and employees are required to comply with Chapter 102 of the Revised Code, as it effects them, without prior notice by the boards of election or the Ohio Ethics Commission.

* * * * *

Your request for an advisory opinion asks whether village officials or employees who earn more than one thousand dollars per year for serving in such capacity are required to comply with the various provisions of Chapter 102 of the Revised Code.' Further, you request an opinion on the question as to whether such officials or employees are required to comply with Chapter 102 of the Revised Code prior to receiving notification from a board of election or the Ohio Ethics Commission.

Your attention is directed to the definition of public official or employee which appears in Division (B) of Section 102.01 of the Revised Code:

"'Public official or employee' means any person who is elected or appointed to an elective office or employed by any public agency. 'Public official or employee' does not include a person elected or appointed to the office of precinct, ward, or district committee member under Section 3517.03 of the Revised Code, any presidential elector, delegates to the national convention, members of school boards, village officials and employees, township trustees and officials and employees, and any member of a board, commission, or bureau of any county, or city who receives less than one thousand dollars per year for serving in such position." (Emphasis added.)

The phrase "who receives less than one thousand dollars per year for serving in such a position," which appears in the above cited division, is a dependent, adjectival clause modifying the noun "member." Thus, the condition providing the one thousand dollar salary ceiling in the last part of that division, applies only to members of a board, commission or bureau of any county or city. The fact that the word "who", which appears in the dependent, adjectival clause, modifies "member" becomes more obvious when one examines the verb "receives" in relation to the other nouns which proceed the verb "member" and are objects of the verb "include." Since the verb "receives" is used, a singular subject is required -- "member who receives," not "employees who receives." In short, the grammatical rule of construction used here is that the dependent, adjectival clause must modify the nearest noun used as object of the verb. Thus, some persons have been excluded by Division (B) of Section 102.01 of the Revised Code, from the definition of "public official or employee." Village officials or employees, therefore, are not affected by the clause "who receives less than one thousand dollars per year for serving in such position" in Division (B) of Section 102.01. They are exempted from the term "public official or employee" in Division (B) of Section 102.01 of the Revised Code by the language "public official or employee' does not include . . . village officials and employees. . . ."

It should be pointed out that the term "public official or employee" is used in some sections of Chapter 102 of the Revised Code while the term "person," which is a broader, separate, distinct term not defined in the definitional section of the chapter, is used in other sections of Chapter 102 of the Revised Code. The exclusion stated in the definition contained in Division (B) of Section 102.01 of the Revised Code can, therefore, be applied only where the term "public official or employee" is used and not where the term "person" is used. For example, Division (B) of Section 102.04 of the Revised Code places prohibitions on certain "persons" who are elected or appointed to an office of or employed by a county, township, municipal corporation or any other governmental entity. The "persons" in that division, who are subject to certain prohibitions, are not exempted from those prohibitions by virtue of the one thousand dollar ceiling in Division (B) of Section 102.01 of the Revised Code. The prohibitions comprehended in Section 102.04 (B) do not apply to "persons" described in that section regardless of the amount of compensation they receive for serving in such position since the term "public official or employee" is not used.

The term "public official or employee" is a term to be used in its entirety. The definitional Section 102.01 of the Revised Code sets it out by quotation marks. Furthermore, the term is defined, not the individual words comprising the term. Therefore, it cannot be argued that because the word "employed" or "employee" appears in another section, such as Division (B) of Section 102.04 of the Revised Code, the exemption of one thousand dollars applies there. The entire term "public official or employee" must be used before the exemption applies.

Section 102.09 of the Revised Code sets out the distribution requirements in Chapter 102;

"The county board of elections shall furnish, at the time petitions are furnished, to each person requesting petitions for nomination for elective office a copy of Chapters 102. and 2921. of the Revised Code, a form for filing the statement required by Section 102.02 of the Revised Code, and such other materials as the ethics commission prepares for

distribution. Each person receiving the materials shall acknowledge their receipt in writing.

"The clerk of the senate and executive secretary of the house of representatives shall distribute to every member of his respective house prior to the first day of February a copy of the form for filing the statement under Section 102.02 of the Revised Code, with such other materials as the ethics commission prepares. The member shall acknowledge his receipt in writing. Within ten days after the commencement of employment, his employer shall give each legislative employee copies of Chapters 102. and 2921. of the Revised Code and such other materials as the ethics commission prepares. The employee shall acknowledge their receipt in writing.

"Within ten days after any person, public official or employee appointed to an office of or employed by a public agency begins the performance of his duties, his employer or appointing authority shall give him a copy of Chapters 102. and 2921. of the Revised Code with such other materials as the ethics commission prepares for distribution. The official or employee shall acknowledge their receipt in writing."

There is no notice requirement in Section 102.09 of the Revised Code. The first paragraph of Section 102.09 of the Revised Code requires the Board of Elections to furnish materials at the time petitions are furnished to those persons requesting petitions for nomination for elective office. The second paragraph requires the various officials of the Senate and House of Representatives of the State of Ohio to distribute materials to each member of those bodies prior to the first day of February of each calendar year. The third paragraph requires the appointing or employing authority of any public agency to distribute within ten days of employment or appointment, copies of Chapters 102. and 2921. of the Revised Code and whatever other materials are prepared by the Ethics Commission for distribution.

However, Division (B) of Section 102.02 of the Revised Code places a notice obligation upon the Ohio Ethics Commission;

"The ethics commission may, using the rulemaking procedures of Chapter 119. of the Revised Code, require any class of public officials or employees whose positions involve a substantial and material exercise of administrative discretion in the formulation of public policy, expenditure of public funds, enforcement of laws, rules, and regulations of the state, county, or cities, or the execution of other public trusts, to file an annual statement on or before the fifteenth day of April under division (A) of this section. The commission shall send the officials or employees written notice of the requirement by the fifteenth day of February of each year the filing is required, unless the official or employee is appointed after such date, in which case the notice shall be sent within thirty days after appointment and the filing shall be made not later than ninety days after appointment." (Emphasis added.)

According to the second sentence of that division, the Ohio Ethics Commission must send written notice to all public officials and employees who are required to file a statement after the Commission extends the filing requirement to them using the rule-making procedures of

Chapter 119 of the Revised Code. This is the only instance in Chapter 102 of the Revised Code where it is incumbent upon the Ohio Ethics Commission to comply with a notice requirement. You should be advised, however, that village officials will never be the recipients of such notice because, as explained above, they are exempted, by definition from the term "public official or employee."

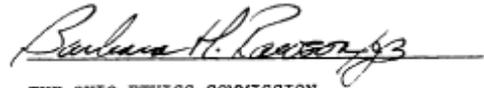
All persons are presumed to know the law insofar as they are affected by it. This general axiom applies to matters both civil and criminal and to the statutory law as well as the common law. The general rule is set out in the case of The London and Lancashire Indemnity Company of America v. Board of Commissioners of Columbiana County et al, 107 Ohio St. 51, 61 (1923), which states "all such acts of Congress, and the creation of boards pursuant thereto, and the promulgation and publication of executive orders and orders of such boards and all other official acts of general public interest . . . will be judicially noticed by the courts and notice and knowledge thereof will be charged to all persons affected thereby. These principles are so well settled that it is unnecessary to cite authorities to support them." (Emphasis added.) The particular duty on public officers to have notice of the law is set out in Lewis v. The State ex rel Kramer, 69 Ohio St. 473, (1903) where it was held that a public officer is charged with notice of that which in the discharge of his duty, he should have discovered.

Neither Section 102.09 nor Section 102.02 of the Revised Code require notice be issued by boards of elections or the Ohio Ethics Commission to persons whose requirement to file arises by virtue of their inclusion in Division (A) of Section 102.02 of the Revised Code. Since the public is imputed to have knowledge of the law as they are affected by it, village officials and employees are required to comply with Chapter 102 of the Revised Code prior to any notice issued by the boards of elections or the Ohio Ethics Commission.

Note should be made here that village officials and employees are exempted only from the term "public official or employee." Since the term "persons" is used in various sections of Chapter 102 and not "public official or employee," village officials and employees are thus, not exempted from those sections.

It is the opinion of the Ohio Ethics Commission, and you are so advised, that the clause "who receives less than one thousand dollars per year for serving in such position" as used in Division (B) of Section 102.01 of the Revised Code applies only to persons who are members of a board, commission, or bureau of any county or city. Therefore, village officials and employees are exempted from the term "public official or employee" as it is used in Chapter 102 of the Revised Code regardless of the amount of compensation received for serving in such position.

Furthermore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that village officials and employees are required to comply with Chapter 102 of the Revised Code, as it affects them, without prior notice by the boards of election or the Ohio Ethics Commission.

A handwritten signature in cursive script, reading "Barbara H. Rawson", is written over a horizontal line.

THE OHIO ETHICS COMMISSION
by (Mrs.) Barbara H. Rawson, Chairman