



OHIO ETHICS COMMISSION

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COLUMBUS 43215

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Advisory Opinion

No. 74-008

October 22, 1974

Syllabus by the Ohio Ethics Commission:

A deputy registrar of the Bureau of Motor Vehicles is prohibited by Division (A) of Section 102.04 of the Revised Code from receiving or agreeing to receive 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 the General Assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts.

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Your request for an advisory opinion asks whether a person, who serves as deputy registrar for a county license bureau of the Bureau of Motor Vehicles of Ohio and who is also an attorney, is prohibited by Division (A) of Section 102.04 of the Revised Code from representing clients before state agencies.

You state, by way of history, that you presently hold the position of a deputy registrar for a county license bureau of the Bureau of Motor Vehicles and have maintained that position for a period of three years. You further state that you practice law and that law practice includes representing clients before such state agencies as the Public Utilities Commission, the Department of Insurance, the Division of Banks and the Division of Securities of the Department of Commerce, among others.

The pertinent section of Chapter 102 of the Revised Code, as noted in your question, is Section 102.04 and it is divided into three divisions; (A), (B) and (C):

"(A) 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 which is before the general assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts.

"(B) 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.

"(C) 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.

The Ohio Ethics Commission, in Advisory Opinion No. 74-001, describes how, by dividing the section into three parts, the legislature exhibited an intention of limiting prohibitions placed upon the rendering of services personally, for compensation to activities within the same governmental entity with which one serves. In other words, Division (A) prohibits rendering of services personally for compensation in certain matters which are before state agencies by persons who are elected or appointed to an office of or employed by a state agency. Division (B) prohibits any person who is elected or appointed to an office of or employed by a county, township, municipal corporation or any other governmental entity, from rendering services personally for compensation in a matter which is before the entity of which he is an officer or by which he is employed.

Division (C) exempts from these prohibitions the performance of certain ministerial functions.

Thus, the prohibition against the practice before state agencies exists if your position as deputy registrar for the Bureau of Motor Vehicles is a state office. When the pertinent statutes and cases are reviewed that conclusion is inescapable.

Section 4501.02 of the Revised Code sets forth the authority which enables the registrar to appoint deputies;

". . . He (the registrar) may, with the approval of the director, appoint such number of assistants, deputies, clerks, stenographers and other employees as are necessary to carry out such laws.

"The salaries and the actual and necessary expenses incurred by the registrar or any of his subordinates, when approved by the director, shall be paid from the state treasury on the warrant of the auditor of the state . . ." (Emphasis added.)

The above strongly implies an appointment to a state office.

Section 4503.03 of the Revised Code describes how a deputy registrar is appointed by the registrar of the Bureau of Motor Vehicles. It also describes how the registrar, not the deputy for the area, selects the location of the office, provides the license tags, and prescribes the amount of bond to be required of the deputy. Section 4503.03 of the Revised Code entitled "Deputy Registrar and Branch Offices; Bond" reads as follows:

"The registrar of motor vehicles shall designate the county auditor and one or more persons in each county to act as deputy registrars, who shall accept applications for the annual license tags and assign a distinctive number in the same manner as the registrar.

Such deputies shall be located in such municipal corporations in the county as the registrar sees fit. For the purposes of facilitating the distribution of license tags, the registrar may provide for the establishment of branch offices in cities having a population of one hundred thousand or over according to the last federal census.

"The registrar shall assign to each deputy a series of numbers sufficient to supply the demand at all times in such community, the registrar shall keep a record in his office of the numbers within the series assigned. Each deputy shall be required to give bond, the form and amount of which shall be prescribed by the registrar. The bonds required of deputy registrars, may, in the discretion of the registrar, be individual or schedule bonds, or may be included in any blanket bond coverage carried by the department.

"The deputies shall keep a file of each application and shall register such motor vehicle with the name and address of the owner thereof."

An Ohio Attorney General Opinion lends weight to the argument that a deputy registrar is appointed to a state office:

"A deputy registrar appointed under the provision of this section is an appointive state officer." (Emphasis added.) 1923 Op. Att'y, Gen. No. 865.

A review of case law indicates that the deputy registrar cannot operate his bureau in variance with the policy established by the Registrar.

In State ex rel Tejan v. Lutz, 31 Ohio N.P. (n.s.) 473, (1934), the court stated that the deputy registrar is required to discharge his duties consistently with the exercise of lawful authority by the registrar, and the instructions of the registrar, predicated upon the law and the administrative plan consistent therewith, are legally binding upon the deputy registrar.

The autonomy of the deputy registrar is thus limited, he is under the direct control of the registrar and as such, he is an officer or employee of the state. Therefore, it is the conclusion of the Ohio Ethics Commission that a deputy registrar is subject to the prohibitions of Division (A) of Section 102.04 of the Revised Code -- the division which applies to state officers.

It is the opinion of the Ohio Ethics Commission, and you are so advised, that as a deputy registrar of a license bureau of the Bureau of Motor Vehicles you are prohibited by Division (A) of Section 102.04 of the Revised Code from receiving or agreeing to receive compensation other than from the agency with which you serve for any service rendered or to be rendered by you personally in any case, proceeding, application, or other matter which is before the general assembly or any department, division, institution, instrumentality, board, commission or bureau of the state, excluding the courts.



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