



OHIO ETHICS COMMISSION

150 EAST BROAD STREET

COLUMBUS 43215

(614) 466-7090

Advisory Opinion No. 75-005

February 26, 1975

Syllabus by the Ohio Ethics Commission:

A member of the Ohio State Advisory Council for Employment Security is not prohibited by Section 102.04 (A) of the Revised Code from receiving compensation for services rendered or to be rendered by him personally in any case, proceeding, application or any 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 asked whether members of the Ohio State Advisory Council for Employment Security come within the purview of Section 102.04 (A) of the Revised Code. You state, by way of history, that the Ohio State Advisory Council for Employment Security was established by Section 4141.08 of the Revised Code. You state further that the Council, by law, is tripartite, with public, labor, and employer representation. Its members serve without salary but receive \$20 per day while attending meetings or while otherwise engaged in necessary Council business, up to a maximum of \$2,000 per year.

With respect to labor and employer representatives, Section 4141.08 of the Revised Code specifies that "two appointees shall be appointed who, on account of their vocations, employment, or affiliations can be classed as representatives of employers; two appointees shall be persons who, on account of their vocations, employment, or affiliations can be classed as representatives of employees; . . ."

You inform us that the employee representatives are usually salaried union officials and the employer representatives are generally on the payrolls of corporate employers or of employer associations.

The pertinent provision of Chapter 102 of the Revised Code, as noted in your question, is Division (A) of Section 102.04 of the Revised Code.

"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."

The first issue to be determined is whether Section 102.04 (A) of the Revised Code applies to "councils." Reference is made to the Ohio Ethics Commission Advisory Opinion No. 75-004 wherein the terms General Assembly, department, division, institution, instrumentality, board, commission, or bureau are defined and described. The conclusion reached therein was that "Instrumentality" is a word broad enough in concept to include the type of organizational unit of government entitled "council." Thus, it is apparent that the Ohio State Advisory Council for Employment Security is an organizational unit of government included in the language of Section 102.04 (A) of the Revised Code.

The next issue to be determined is whether members of the Ohio State Advisory Council for Employment Security are persons "appointed to an office" in Section 102.04 (A) of the Revised Code. The Ohio State Advisory Council for Employment Security is established under Section 4141.08 of the Revised Code.

"There is hereby created an advisory council of seven members to be appointed by the governor with the advice and consent of the senate. Two appointees shall be persons who, on account of their vocations, employment, or affiliations, can be classed as representatives of employees; and the remaining three appointees shall be persons whose training and experience qualify them to deal with the difficult problems of unemployment compensation, particularly with respect to the legal, accounting, actuarial, economic, and social aspects of unemployment compensation.

Each member of the council shall serve without salary, but shall receive twenty dollars per day while attending meetings of the council, or while engaged in the necessary business of the council, provided said payments shall not exceed two thousand dollars in any one year, and shall be allowed traveling and other incidental expenses. Terms of office shall be for seven years, commencing on the first day of March and ending on the last day of February, except that upon expiration of the term ending July 23, 1973, the new term which succeeds it shall commence on July 24, 1973, and end on February 29, 1980; upon expiration of the term ending June 27, 1977, the new term which succeeds it shall commence on June 28, 1977 and end on February 29, 1984; and upon expiration of the term ending March 26, 1978, the new term which succeeds it shall commence on March 27, 1978 and end on February 28, 1985. Each member shall hold office from the date of his appointment until the end of the term for which he was appointed. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall hold office for remainder of such term. Any member shall continue in office subsequent to the expiration date of his term until his successor takes office, or until a period of sixty days has elapsed, whichever occurs first.

The council shall choose one of its members as chairman.

The director of the division of research and statistics shall act as secretary of the council. The administrator of the bureau of employment services shall provide the council with other competent assistants who shall be subject to the approval of the council.

The council shall have access to the records of the bureau of employment services and to the reasonable services of the employees of the bureau. It may request the administrator, or any of the employees appointed by the administrator, or any employer or employee subject to sections 4141.01 to 4141.46 of the Revised Code ' to appear before it and to testify relative to the functioning of such sections and to other relevant matters. The council may conduct research of its own, make and publish reports, and recommend to the administrator, the unemployment compensation board of review, the governor, or the legislature needed changes in sections 4141.01 to 4141.06 of the Revised Code, or in the rules and regulations of the bureau from time to time as it deems necessary. Action by the council may be taken by a majority vote of its members.

The administrator shall furnish the council with a meeting place and secretarial service requisite to the discharge of its duties, and shall make available to the council from the administrative fund the funds necessary to enable the council to perform its duties.

The council shall meet once each month or oftener if it deems necessary." (Emphasis added)

In Ohio Ethics Commission Advisory Opinion 74-007 the conditions for determining whether one is appointed to an "office" of the state are described. An additional condition or criteria of being "appointed to an office of" is described in Ohio Ethics Commission Advisory Opinion No. 75-004, that being, the exercise of "sovereign power." Therefore, it becomes necessary to examine the responsibilities placed upon the Ohio State Advisory Council for Employment Security to determine whether the members of the Council in their statutory duties perform functions which could constitute an exercise of sovereign power. The pertinent portion of Section 4141.08 of the Revised Code states:

"The council may conduct research of its own, make and publish reports, and recommend to the administrator, the unemployment compensation board of review, the governor, or the legislature, needed changes in sections 4141.01 to 4141.06 of the Revised Code, or its rules and regulations of the bureau from time to time as it deems necessary." (Emphasis added)

In State ex rel Herbert v Ferguson., 142 Ohio St. 496 (1944) the court held that the mere formulation of plans or the making of recommendations can not be considered the exercise of sovereign power. Since a member of the Ohio State Advisory Council for Employment Security may only conduct research, make and publish reports and recommend he does not exercise "sovereign power." Therefore, he is not one who is "appointed to an office of" the state and the prohibitions of Section 102.04 (A) of the Revised Code do not apply to him.

Therefore, it is the conclusion of the Ohio Ethics Commission, and you are so advised, that a member of the Ohio State Advisory Council for Employment Security is not prohibited

from receiving compensation for services 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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by (Mrs) Barbara H. Rawson, Chairman

