



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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Advisory Opinion No. 84-005
March 15, 1984

Syllabus by the Commission:

(1) Division (A) of Section 102.03 of the Revised Code prohibits a former employee of a state department from representing his new employer before the department or any other public agency for a period of one year after his departure from state service on any matter in which he personally participated as a state employee.

(2) Division (A) of Section 102.03 of the Revised Code does not prohibit a former employee of a state department from representing his new employer before the department on a new matter that arose after his departure from state service.

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You asked whether the Ohio Ethics Law and related statutes would prohibit an employee of the Department of Mental Retardation and Developmental Disabilities (hereinafter Department) from accepting a position with a firm that is interested in developing residential facilities for the mentally retarded in Ohio, but has not previously operated in the state.

You stated, by way of history, that you have been a professional in the mental retardation field for twenty-three years, and have been employed by the Department for five years, most recently as Deputy Director and Chief of the Office of Residential Contracts. You are considering a position with a firm interested in developing residential opportunities for the mentally retarded and mentally ill in Ohio. You stated that the firm has not previously operated in Ohio, and has not previously had any relationship with the Department.

Division (A) of Section 102.03 of the Revised Code, the "revolving door" prohibition of the Ohio Ethics Law, prohibits: (1) a present or former public official or employee; (2) from representing a client or acting in a representative capacity for any person (defined in Section 1.59 of the Revised Code to include an individual, corporation, partnership, association, or other similar entity); (3) before any public agency; (4) on any matter in which he personally participated as a public official or employee; (5) during government service and for one year thereafter (See: Ohio Ethics Commission Advisory Opinions No. 80-008, 81-002, and 82-002).

For purposes of this prohibition, the term "represent" is defined to include "any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person." The term "matter" includes "any case, proceeding, application, determination, issue or question, but does not include the proposal, consideration, or enactment of statutes, rules, ordinances, resolutions, or charter, or constitutional amendments."

Division (A) of Section 102.03 of the Revised Code does not prohibit a former public official or employee from: 1) representing private clients on new matters or matters in which he had not participated; 2) being retained or employed by the agency with which he served; and 3) performing ministerial functions, such as preparing tax returns and applications for permits or licenses.

In the instant case, the firm with which you seek employment is not presently doing business in Ohio. Therefore, most "matters" before the Department regarding this firm would be new matters, which are not covered by the prohibition. However, you are prohibited from representing your new employer or a client before the Department or any other public agency on any matter in which you personally participated while employed by the Department.

It should be noted that Division (D) of Section 102.03 of the Revised Code prohibits a public official or employee from seeking employment by sending resumes to firms that appear before or are regulated by his agency, unless the person withdraws himself from consideration of any matter involving any firm with which he has had contact regarding possible employment (See: Ohio Ethics Commission Advisory Opinion No. 77-003).

The conclusions of this opinion are based upon the facts presented, and are rendered only with regard to questions arising under Chapter 102. and Section 2921.42 of the Revised Code.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that: (1) Division (A) of Section 102.03 of the Revised Code prohibits a former employee of a state department from representing his new employer before the department or any other public agency for a period of one year after his departure from state service on any matter in which he personally participated as a state employee; and (2) Division (A) of Section 102.03 of the Revised Code does not prohibit a former employee of a state department from representing his new employer before the department on a new matter that arose after his departure from state service.


Richard D. Jackson, Chairman
OHIO ETHICS COMMISSION