

OHIO ETHICS COMMISSION

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Advisory Opinion Number 98-005
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Syllabus by the Commission:

- (1) Division (E) of Section 102.03 of the Revised Code does not prohibit a publicly employed electrical safety inspector from teaching a recertification class for electrical contractors who work within the inspector's jurisdiction if the inspector receives no compensation for his services and follows the constraints discussed below;
- (2) Division (E) of Section 102.03 of the Revised Code does not prohibit a publicly employed electrical safety inspector, who follows the constraints discussed below, from receiving compensation for teaching a recertification class for electrical contractors who do not work within, and are not subject to, the inspector's jurisdiction;
- (3) Division (E) of Section 102.03 of the Revised Code prohibits a publicly employed electrical safety inspector from receiving compensation for teaching a recertification class for electrical contractors who work within the inspector's jurisdiction;
- (4) Division (A)(1) of Section 2921.43 of the Revised Code prohibits a public servant, including a publicly employed electrical safety inspector, from receiving compensation, from anyone other than the public agency he serves, for teaching recertification classes to any party, if the public servant is required to teach recertification classes as a part of his public job duties.

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You have asked whether the Ethics Law and related statutes prohibit a publicly employed electrical safety inspector from: (1) teaching classes to contractors within his jurisdiction without receiving compensation for his services; (2) receiving compensation for teaching a recertification class for electrical contractors who do not work in his jurisdiction; and (3) receiving compensation for teaching a recertification class for electrical contractors who work within his jurisdiction.

As explained below: (1) a publicly employed electrical safety inspector is not prohibited from teaching classes to electrical contractors who work within his jurisdiction provided that he receives no compensation for his services; (2) a publicly employed electrical safety inspector is not prohibited from receiving compensation for teaching a recertification class for electrical

contractors provided that the contractors who are the source of the compensation do not work within his jurisdiction; and (3) a publicly employed electrical safety inspector is prohibited from receiving compensation for teaching a recertification class for electrical contractors who work within his jurisdiction. In addition, a publicly employed electrical safety inspector, who is required to teach recertification classes as a part of his public service, is prohibited from receiving compensation to teach the same classes from **any party** other than his public employer.

Outside Private Employment-General Conditions

The Ethics Commission has consistently held that the Ohio Ethics Law and related statutes do not prohibit public officials from engaging in private outside employment or the practice of a profession as long as no conflict of interest exists between the official's private interests and public duties. Ohio Ethics Commission Advisory Opinion No. 96-004. However, the Commission has explained that the Ethics Law and related statutes impose restrictions upon public officials and employees with regard to their ability to engage in private outside employment or the practice of a profession. These restrictions serve the public interest in maintaining effective, objective, and impartial government by preventing the creation of a situation which may impair the objectivity and impartiality, and therefore, the effectiveness, of a public official or employee, or the public agency with which he serves. Adv. Ops. No. 89-014 and 90-002.

Facts-Electrical Contractors

A person with at least two years of electrical contracting experience can obtain a qualification certificate as an electrical contractor from the electrical section of the Ohio Construction Industry Examining Board (OCIEB). R.C. 4740.01(A), 4740.01(D) and 4740.06(B)(5)(b); OAC 4101:16-4-03(E). OCIEB will issue an electrical contractor's certificate to any U.S. citizen of at least eighteen years of age whom it determines to be of good moral character and who successfully passes an examination and meets the experience requirement. R.C. 4740.06(B) and (C); OAC 4101:16-4-03. As a condition of renewal, a person holding an electrical contractor's certificate must complete thirty hours of approved continuing education courses over a three-year period. R.C. 4740.05(A)(3); OAC 4101:16-4-07(C). This thirty hours of approved continuing education must be comprised as follows: twenty hours on the National Electrical Code (NEC); five hours on business and administration skills; two and one-half hours on Occupational Safety and Health Administration (OSHA) and other safety regulations; and two and one-half hours on technology in the field of electrical contracting. OAC 4101:16-4-07(C).

The electrical section of the OCIEB must approve the training agencies that will provide the continuing education courses. R.C. 4740.05(A)(3); OAC 4101:16-4-07(A). The OCIEB electrical section must approve the training agency's proposed continuing education course of study or program of instruction. OAC 4101:16-4-07(B) and (D). The training agency must provide the OCIEB with the educational objectives and content of the proposed course or program, and the instructor's name and qualifications. OAC 4101:16-4-07(B)(1). Also, in order to meet the continuing education requirements for renewal of contractor certificates, the course of study or program of instruction must be in one or more of the four subject areas which are

required for contractor certificate renewal: (1) the current NEC; (2) business and administration skills; (3) OSHA and other safety regulations; and (4) technology in the field of electrical contracting. OAC 4101:16-4-07(D). OCIEB's electrical section has approved some publicly employed electrical safety inspectors to provide continuing education courses of study for electrical contractors.

The first issue presented by your request is whether all publicly employed electrical safety inspectors are subject to the Ohio Ethics Law.

Prohibition Imposed By R.C. 102.03(D) And (E) Upon "Public Officials And Employees"

Your attention is directed to R.C. 102.03 (D) and (E), which read:

(D) No public official or employee shall use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is 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.

(E) No public official or employee shall solicit or accept anything of value that is 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.

The term "public official or employee" is defined for purposes of R.C. 102.03 as any person who is elected or appointed to an office or is employed by any public agency; the term "public agency" is defined to include any department, division, board, commission, authority, bureau, or other instrumentality of a county, city, village, township, or other governmental entity. R.C. 102.01(B) and (C).

The term "electrical safety inspector" (ESI) is defined for purposes of Chapter 3738. of the Revised Code as a person who holds a certification of competency from the Board of Building Standards to engage in the "practice of electrical inspections" within the state. R.C. 3783.01(A) and 3783.06. The term "practice of electrical inspection" is defined in R.C. 3783.01(B) as:

"[A]ny ascertainment of compliance with the Ohio building code, or the electrical code of a political subdivision of this state by a person, who, for compensation, inspects the construction and installation of electrical conductors, fittings, devices, and fixtures for light, heat or power services equipment, or the installation, alteration, replacement, maintenance, or repair of any electrical wiring and equipment that is subject to any of the aforementioned codes.

Only a person who holds a certificate of competency may engage in the practice of electrical inspection. R.C. 3783.06.

Persons who are employees of a county or municipality serving as certified ESIs to determine compliance with the Ohio Building Code or the electrical code of the political subdivision are clearly "public officials or employees" under the definition of R.C. 102.01(B) and (C). This conclusion that ESIs who are employed by political subdivisions are "public officials or employees" as defined in R.C. Section 102.01 is consistent with the Attorney General's conclusion in 1981 Ohio Op. Att'y Gen. No. 81-078, in which he held:

Clearly, an individual who is hired by the state or a political subdivision to inspect electrical equipment and wiring and to ascertain whether it complies with the Ohio Building Code or a local electrical code holds a public employment. (Emphasis added.)

It is noted that R.C. 307.13 authorizes county commissioners to "contract" for the services of an ESI. The fact that an ESI is hired by the board of county commissioners pursuant to an independent contract does not necessarily mean that the inspector is not considered to be a "public official or employee" for purposes of Chapter 102. of the Revised Code. Adv. Op. No. 77-004 (whether a person is "a public official or employee" for purposes of R.C. Section 102.03 depends on the authority and discretion he exercises, and not on the contractual or other arrangement under which he serves).

The Ethics Commission has held that public employees share in the responsibility of the public trust exercised by their elected and appointed superiors but, generally, independent contractors do not. Adv. Ops. No. 75-012 and 89-003. The Commission has held that the essential requirement that determines whether a position falls within the statutory definition of "public official or employee" is that the individual or firm holding the position exercises "sovereign power," which has been described as discretionary, decision-making duties made on behalf of the public authority which the official or employee serve. Adv. Ops. No. 75-004 and 85-005. If an individual or firm serving a political subdivision is given the authority and administrative discretion to exercise the sovereign power of government, then the individual or firm becomes subject to the Ohio Ethics Law regardless of the contractual arrangement of his service. Adv. Ops. No. 77-004 and 89-003.

As set forth in the definition above, "electrical safety inspectors" are persons who contract with political subdivisions to serve as ESIs and perform duties involving the exercise of discretionary decision-making authority on behalf of the political subdivisions they serve. As a result, an ESI is a "public official or employee" for purposes of R.C. Section 102.03, regardless of whether the ESI is employed by the political subdivision, or is engaged by an independent contract. This conclusion is also consistent with the Attorney General's holding in 1981 Ohio Op. Att'y Gen. No. 81-078

Therefore, persons holding a certificate of competency to engage in the practice of electrical inspection who are either employed, or hired pursuant to contract, by political subdivisions to inspect electrical wiring and equipment for compliance with state and local electrical codes are "public officials or employees" for purposes of R.C. Section 102.03. See generally Adv. Op. No. 75-033 (a building inspector employed by a city is a "public official or employee" for purposes of R.C. Section 102.03). See also Adv. Ops. No. 77-004 and 78-004

(individuals and firms who serve as municipal engineers pursuant to contract are "public officials or employees" for purposes of R.C. Section 102.03).

Application Of Prohibition-R.C. 102.03(D) And (E)

Having determined that all publicly employed ESIs are subject to the Ohio Ethics Law, the issue becomes whether the compensation that a publicly employed ESI receives for teaching a recertification class for electrical contractors is of such a character as to manifest a substantial and improper influence upon the ESI with respect to his public duties.

R.C. 1.03 defines "anything of value" for purposes of R.C. 102.03 to include money, the promise of future employment, and every other thing of value. R.C. 102.01(G). A definite pecuniary benefit is considered to be a thing of value for purposes of R.C. 102.03(D) and (E). Adv. Ops. No. 79-008, 85-006, and 86-007. Therefore, the compensation which a publicly employed ESI receives for teaching a recertification class for electrical contractors is a thing of value for purposes of R.C. 102.03(D) and (E).

R.C. 102.03(D) and (E) prohibit a public official or employee from soliciting, accepting, or using the authority or influence of his official position to secure anything of value if the thing of value could manifest a substantial and improper influence upon him with respect to his duties. Adv. Op. No. 90-003. The Ethics Commission has held that in order to be prohibited for purposes of R.C. Section 102.03, the thing of value must be of a substantial and improper character. Adv. Ops. No. 88-004, 89-006, and 89-014. Generally, the compensation that a public official or employee receives from private outside employment or business activity would be of a substantial nature. Adv. Op. No. 96-004. R.C. 102.03(D) and (E), however, do not prohibit a public official or employee from engaging in private business activity so long as no conflict of interest exists between the public official's or employee's public position and private financial interests. Adv. Ops. No. 84-009, 84-012, and 92-009.

Soliciting Or Accepting Anything Of Value

Division (E) of Section 102.03 of the Revised Code was enacted as part of Am. Sub. H.B. 300, 116th Gen. A. (1986) (eff. September 17, 1986) to supplement the prohibitions imposed by R.C. 102.03(D). Prior to the enactment of Am. H.B. 300, Division (D) of Section 102.03 prohibited a public official or employee from using the authority or influence of his office or employment to secure a thing of value for himself that would not ordinarily accrue to him in the performance of his duties if the thing of value was of such a character as to manifest a substantial and improper influence upon him with respect to his duties. Adv. Op. No. 88-004. In its application of Division (D), before the enactment Division (E), the Ethics Commission held that a public official or employee was prohibited from using the authority or influence of his public position to solicit or receive privately earned consulting fees from a party that is interested in matters before, regulated by, or doing or seeking to do business with his public agency. Adv. Ops. No. 79-002 and 86-008.

R.C. 102.03(E) does not require that the public official or employee use the authority or influence of his office or employment to secure an improper thing of value. Rather, by its

language, R.C. 102.03(E) prohibits a public official or employee from merely soliciting or accepting an improper thing of value. Adv. Op. No. 90-004. The Ethics Commission has held that the relationship between the public official or employee and the source of the thing of value determines whether the thing of value received from that party is improper for purposes of R.C. 102.03(E). Adv. Ops. No. 86-011 and 92-015. The Commission has held that the objectivity and independence of judgment, of a public official or employee, in performing his official public duties could be impaired, and subsequent decisions in matters involving the source of the thing of value could be affected, if he were to solicit or accept a thing of value from a party that is interested in matters before, regulated by, or doing or seeking to do business with his own public agency. Adv. Ops. No. 84-010, 87-006, 87-009, and 89-006. See also Adv. Ops. No. 87-008 and 93-004.

Thus, the Commission has held that a public official or employee who engages in a private outside business or the practice of a profession is prohibited from accepting, soliciting, or using his authority or influence to secure commissions, fees, or other payments from parties who have these ties to the official. A number of different opinions of the Ethics Commission have addressed conflicts in outside business opportunities for public servants. See, e.g., Adv. Ops. No. 79-002 (an engineering supervisor for a state agency is prohibited from providing engineering consulting services to a party that is subject to the agency's regulation), 87-009 (a city council member is prohibited from serving as the agent for landowners who have petitioned to have their land annexed into the city), 89-010 (a Department of Agriculture employee is prohibited from providing services as an independent contractor to a state institution to which he is assigned regulatory responsibilities), 92-008 (a township clerk is prohibited from being employed by a bank that is a depository of township funds), and 93-015 (a city treasurer and tax administrator is prohibited from providing tax preparation and accounting services for those who are required to file city income tax returns). See also Adv. Ops. No. 79-006, 80-004, 84-010, 86-011, 89-013, 89-014, and 90-001 (addressing the prohibitions against the receipt of an honorarium, registration fees, and travel, meal, and lodging expenses from a party that is interested in matters before, regulated by, or doing or seeking to do business with the agency with which he serves).

The Ethics Commission has explained that a public official or employee who is entrusted with the duty to perform regulatory responsibilities for his public agency and who has contracted to provide services for compensation to a regulated party in his private capacity would have an inherent conflict of interest or divided loyalties such that his independence and objectivity of judgment with regard to carrying out the decisions and responsibilities of his public agency could be impaired. For example, in Advisory Opinion No. 89-010, the Commission held:

[C]ertain circumstances could arise in which the [official or employee] is required, as part of his official duties, to suspend the institution's . . . operations or condemn its . . . products. The [official or employee] could be favorably disposed towards the institution due to his holding outside employment there as an independent contractor. On the other hand, if a controversy arises over the services which he has provided as an independent contractor, it could present an improper motivation for the suspension of operations or the condemnation of the . . . products.

This opinion will now apply the law and Commission precedent, set forth above, to your three questions.

Performing Teaching Services Without Compensation

You have asked whether the Ethics Law and related statutes prohibit a publicly employed ESI from teaching classes to contractors within his jurisdiction without receiving compensation for his services.

As explained above, R.C. 102.03(E) prohibits a public official or employee from soliciting or accepting "anything of value." The teaching of a class by an publicly employed ESI without receiving compensation for his services would not result in the inspector receiving any monetary gain, absent facts indicating otherwise. See generally Adv. Op. No. 90-003. Therefore, the official would not be receiving "anything of value." R.C. 102.03(E) would not prohibit a publicly employed ESI from teaching classes to electrical contractors within his jurisdiction provided that he receives no compensation for his services.

Performing Teaching Services Outside His Jurisdiction

You also ask whether the Ethics Law and related statutes prohibit a publicly employed ESI from receiving compensation for teaching a recertification class for electrical contractors who do not work in his jurisdiction.

In Advisory Opinion No. 84-012, the Ethics Commission held that a service forester employed by the Division of Forestry of the Department of Natural Resources was prohibited from soliciting or receiving fees for services rendered on a project on which he provides, or is required to provide, technical assistance or advice in his official capacity. But in that opinion, the Ethics Commission also held that "Division (D) of Section 102.03 of the Revised Code does not, per se, prohibit the service forester from operating a private tree service outside his district." In Advisory Opinion No. 90-002, the Commission held that R.C. 102.03(D) and (E) did not prohibit a Department of Agriculture meat inspector from owning and operating a meat processing plant located in an inspection district other than his own, if the Department reviewed and authorized his outside business, despite the fact that the Department would regulate his plant.

As explained above, a publicly employed ESI has the responsibility to determine whether the work performed by electrical contractors complies with the Ohio Building Code or the political subdivision's electrical code. The issue of a publicly employed ESI receiving compensation for teaching a recertification class for electrical contractors who do not work in his jurisdiction is akin to the situations that were addressed in Advisory Opinions No. 84-012 and 90-002 in which a public employee is charged with performing an official duty within a specified geographical area.

Therefore, R.C. 102.03(E) would not prohibit a publicly employed ESI from receiving compensation for teaching a recertification class for electrical contractors who are not interested in matters before, regulated by, or seeking to do business with the political subdivision that the publicly employed ESI serves. A publicly employed ESI who receives compensation for

teaching a recertification class for electrical contractors who do not work in his jurisdiction, however, must take extreme care to determine that an electrical contractor who desires to attend his class and pay compensation is neither regulated by, nor interested in, any matters pending within his jurisdiction and that matters between the contractor and the inspector's jurisdiction are unlikely to arise. Also, as explained below, a publicly employed ESI is subject to the general restrictions upon private outside employment that are imposed by R.C. 102.03(D).

Performing Teaching Services for Compensation Within His Jurisdiction

Your final question is whether the ESIs are prohibited from receiving compensation to teach certification courses to electrical contractors who are regulated by the ESIs.

In the instant situation, electrical contractors who work within a particular jurisdiction are regulated by that jurisdiction's publicly employed ESIs. Because they are regulated by the ESI within that jurisdiction, receipt of compensation, by an ESI, from these electrical contractors for teaching a recertification class is of such a character as to manifest a substantial and improper influence upon the ESI with respect to his duties.

There are different aspects to the potential improper influence that could result from this compensation. For example, an ESI may be more favorably disposed towards those contractors who have paid for his teaching services. An ESI may, conversely, more closely scrutinize work done by contractors who elected to take courses taught by other sources. On the other side of the transaction, a contractor may feel compelled to receive instruction from an ESI who inspects his work. Contractors who choose not to receive instruction from an ESI who inspects their work may challenge the regulation of their work by that ESI on the basis that the ESI is more rigid in his application of the law with respect to contractors who have not attended his classes. In fact, the incident that ultimately brought this advisory question to the Ethics Commission was a question directed to a county prosecuting attorney's office, involving whether a county ESI was prohibited from teaching classes to, and inspecting the work of, electrical contractors within his jurisdiction. That issue was resolved when the county prosecutor's office issued an advisory opinion, based on Ethics Commission precedent, which concluded that the Ethics Law prohibits a county ESI from teaching classes to, and inspecting the work of, electrical contractors within his jurisdiction.

Based upon these concrete examples of conflict of interest, R.C. 102.03(E) prohibits publicly employed ESIs from soliciting or accepting compensation for teaching a recertification class for electrical contractors who work within their jurisdiction because the independence and objectivity of judgment of the inspectors could be impaired with regard to carrying out the decisions and responsibilities of their public agencies.

Exception to the Application of R.C. 102.03(E)

The Ethics Commission has held that in certain situations, a public official or employee who engages in private outside business activity may withdraw from consideration of matters that would create an impairment of his objectivity and independence of judgment. Adv. Op. No. 96-004. See also Adv. Ops. No. 89-006, 90-002, and 90-009. However, a public official's or

employee's withdrawal from consideration of issues concerning parties who are interested in matters before, regulated by, or doing or seeking to do business with his own public agency may be accomplished only when such a withdrawal: (1) does not interfere with the official's or employee's performance of his assigned duties; and (2) is approved by the appropriate officials at his employing agency to assure that no conflict of interest is present. Id. See also Adv. Op. No. 89-010.

The application of R.C. 102.03(E) is dependent upon the facts and circumstances of each individual situation. Adv. Ops. No. 90-004 and 91-002. In some situations a public official or employee may not have any official duties that bring him into contact as a public official or employee with the party with which he desires to conduct private business, who is also regulated by, or does business with, the public agency of the public official. In such a situation, it is obvious that a withdrawal from matters affecting the interested party is unnecessary. But it is necessary, in that situation, that the appropriate officials at the affected official's or employee's agency approve the proposed activity of the official or employee because the existence of a private business relationship would affect his employing public agency's ability to assign new duties that could bring him into contact with the interested party in the future. Therefore, R.C. 102.03(E) prohibits a public official or employee from engaging in private outside employment or business activity with parties that are interested in matters before, regulated by, or seeking to do business with his own agency, unless he is able to withdraw from consideration of matters which would pose a conflict of interest and his withdrawal is approved by his employing public agency, or if he does not have any official duties that bring him into contact, as a public official or employee, with the party with whom he desires to conduct private business.

The issue becomes whether a publicly employed ESI is able to sufficiently and completely withdraw from consideration of regulatory matters that affect the electrical contractors who work within his jurisdiction and who pay a fee to attend a recertification class taught by the ESI.

A public employee owes his responsibility to the exercise of the public trust by performing the tasks assigned to him by his employing agency. Adv. Op. No. 89-010. This public duty cannot be impaired by a public employee's concern for his own personal interests. Id. As explained above, a publicly employed ESI has the responsibility to determine whether the work performed by electrical contractors comply with the Ohio Building Code or the political subdivision's electrical code.

In the instant situation, a publicly employed ESI who would provide continuing education courses for electrical contractors would open his class to those electrical contractors who are in need of acquiring thirty hours of approved continuing education courses to renew their electrical contractor's certificates. Of course, this may well include electrical contractors who are regulated by the publicly employed electrical inspector. Thus, R.C. 102.03(E) would require the inspector to withdraw from determining whether the work performed by a contractor who has taken his class complies with the Ohio Building Code or the political subdivision's electrical code.

Whenever the publicly employed ESI would withdraw from matters affecting contractors, the political subdivision that he serves would have to arrange for another inspector to determine whether the electrical contractor's work complies with the Ohio Building Code or the political subdivision's electrical code. A means of assuring that electrical contractors are not inspected by the same ESIs from whom they take certification classes would be required to be kept by the political subdivision, the inspector, and the contractors to apply this standard. Because the publicly employed ESIs private outside employment interests would conflict with his public duties, the political subdivision that he serves would be burdened with the requirement to make special arrangements for an inspection to be conducted by an inspector who has no conflict. It is likely that contractors would be inconvenienced by possible delays while the political subdivision strained to arrange for special inspections. Furthermore, because of the large number of individual contractors who would take the courses during the three years in which a contractor must acquire thirty hours of approved continuing education courses, it is possible that a large number, or perhaps all, of the contractors within the jurisdiction of a publicly employed ESI may have taken the inspector's continuing education course. In such a situation, a withdrawal by a ESI from matters that pose a conflict of interest may result in withdrawal from most, or perhaps all, of the public duties that he is responsible to perform.

Therefore, it is apparent that the withdrawal of a publicly employed ESI from consideration of regulatory matters that affect electrical contractors who work in his jurisdiction and who attend a recertification class that he taught for a fee would create an insurmountable interference with the inspector's performance of his assigned public duties. Accordingly, R.C. 102.03(E) prohibits a publicly employed ESI from receiving compensation for teaching a recertification class for electrical contractors who work within the inspector's jurisdiction.

Restrictions On Private Outside Employment-R.C. 102.03(D)

As explained above, R.C. 102.03(D) prohibits a public official or employee from using the authority or influence of his position to secure anything of value for himself, family members, business associates, or others where there is a conflict of interest. Adv. Ops. No. 79-006, 87-009, and 89-006. R.C. 102.03(D) requires that a public official or employee take some action or inaction to secure the thing of value.

Generally, the Ethics Commission has held that the compensation that a public official or employee secures from engaging in private outside employment or business activity is of such a character as to manifest a substantial and improper influence upon him with respect to his duties when the fees result from the direct use of his official authority or influence, impair his performance, or burden the public resources entrusted to him for the benefit of his own personal financial interests.

Accordingly, in Advisory Opinion No. 96-004, the Ethics Commission identified general restrictions that apply to all public officials and employees who engage in private outside employment. The Commission held in Advisory Opinion No. 96-004 that R.C. 102.03(D) prohibits a public official or employee who engages in private outside employment or business activity from:

- (1) using public time, facilities, personnel, or resources in conducting a private business or while engaging in private outside employment including conducting demonstrations for clients using public equipment;
- (2) using his official title or identification on private business cards or other written materials or appearing in uniform while soliciting business or conducting demonstrations for clients;
- (3) using his relationship with other public officials and employees to secure a favorable decision or action by the other officials or employees regarding his private interests;
- (4) discussing, deliberating, or voting on any matter involving his private business, including recommending his outside employer's or business's services to his own public agency;
- (5) receiving fees for providing services rendered on projects that he has recommended in his official capacity;
- (6) participating in decisions or recommendations regarding his competitors; and,
- (7) using his public position or authority in any other way to secure a benefit for his outside employer or private business.

The Commission has established these general limitations on the conduct of a public official or employee who wishes to engage in a private business. The application of these limitations is dependent on the facts and circumstances of each individual situation. See generally Adv. Ops. No. 77-003, 86-007, and 92-009.

Application of R.C. 102.03(D) Prohibitions

In light of the restrictions set forth above, the compensation that a publicly employed ESI would receive from an electrical contractor who does not work within his jurisdiction would be unrelated to the official duties that he is entrusted to provide as a public official or employee. It must be reiterated that the publicly employed ESI is required to do his private outside work on his own time, using his own equipment. Also, he is prohibited from using his official title or identification on private business cards or advertising. While teaching a recertification class for compensation from electrical contractors who do not work within his jurisdiction, a publicly employed ESI is limited to identifying his public employer and describing the duties that he performs. He is prohibited from using his relationship with other public officials and employees to intervene in decisions that would affect contractors who have paid compensation to attend his class.

Receiving Supplemental Compensation-R.C. 2921.43(A)(1)

Your question does not indicate whether any of the ESIs would be required, as a part of the duties they perform for the public agencies they serve, to teach recertification classes. However, if any of the ESIs are required to teach recertification classes as a part of their job duties, your question also implicates R.C. 2921.43(A)(1), which provides as follows:

(A) No public servant shall knowingly solicit or accept and no person shall knowingly promise or give to a public servant either of the following:

(1) Any compensation, other than as allowed by divisions (G), (H), and (I) of section 102.03 of the Revised Code or other provisions of law, to perform his official duties, to perform any other act or service in the public servant's public capacity, for the general performance of the duties of the public servant's public office or public employment, or as a supplement to the public servant's public compensation.

The term "public servant" is defined, in R.C. 2921.01(B), to include any "public official," and "any person performing ad hoc a governmental function." The term "public official" is defined, in R.C. 2921.01(A), to include "any elected or appointed officer, or employee, or agent of the state or any political subdivision." As discussed more fully above, a publicly employed ESI is an employee of the political subdivision he serves, and is, therefore, a "public servant" for purposes of R.C. 2921.43(A)(1).

R.C. 2921.43(A)(1) prohibits a public servant from accepting compensation from any party, except as provided by law, for the performance of his official duties, for the general performance of the duties of his office or employment, or as a supplement to his public compensation. Generally, the Commission has stated that this section prohibits a public official from receiving compensation, from any party other than his public employer, for performing the duties of his public position. Adv. Op. No. 89-012 (a city law director is required, as a part of his job duties, to represent the city school district, and cannot accept additional compensation, from the school district, to represent it) and Adv. Op. No. 90-007 (a county prosecutor is required, as a part of his job duties, to represent townships within the county, and cannot accept additional compensation, from any township, to represent it.)

If the ESIs in your question are required, as a part of their public employment, to teach recertification classes for the political subdivisions they serve, the ESIs would be prohibited from receiving compensation from any other party to teach the same classes. The ESIs would be prohibited from receiving compensation from **any** party, other than their employers, for teaching recertification classes, including parties regulated by the ESIs and parties who are not regulated by the ESIs. Once again, the facts that you have presented do not indicate whether this situation could arise.

Conclusion

The Ethics Commission is aware that political subdivisions employ individuals as ESIs due to their professional expertise and that knowledgeable individuals may also desire to use their knowledge for private business endeavors. However, a public official or employee owes his first responsibility to the exercise of the public trust; this responsibility must not be impaired by the official's or employee's concern for his private business activities. As explained above, R.C. 102.03(D) and (E) are intended to prevent the creation of any situation that may impair the objectivity and impartiality, and therefore the effectiveness, of a public official or employee in the exercise of his public responsibilities. Adv. Op. No. 90-012. A publicly employed ESI occupies a position of great visibility in the profession such that teaching a recertification class for electrical contractors may create the appearance of impropriety by injecting the prestige of his public employment into his private business activities. A publicly employed ESI must take great care if he teaches a recertification class for electrical contractors to avoid creating the impression that the class is officially endorsed by the political subdivision that employs the inspector. All public officials and employees must accept necessary restrictions to avoid any possible interference with their official public responsibilities. Adv. Ops. No. 89-010, 90-009, and 90-012.

Therefore, as explained above: (1) a publicly employed electrical safety inspector is not prohibited from teaching classes to electrical contractors who work within his jurisdiction provided that he receives no compensation for his services; (2) a publicly employed electrical safety inspector is not prohibited from receiving compensation for teaching a recertification class for electrical contractors provided that the contractors who are the source of the compensation do not work within his jurisdiction; (3) a publicly employed electrical safety inspector is prohibited from receiving compensation for teaching a recertification class for electrical contractors who work in his jurisdiction; and (4) a publicly employed electrical safety inspector is prohibited from receiving supplemental compensation, from any party, for teaching recertification classes, if he is required to teach these classes as a part of his public employment.

A publicly employed electrical safety inspector should inquire whether there are charter provisions, local ordinances, collective bargaining provisions, or other restrictions within the political subdivision that he serves that may further restrict his ability to engage in private outside business activity. The Ethics Commission is statutorily authorized to address only issues arising under Chapter 102. and Sections 2921.42, 2921.421, and 2921.43 of the Revised Code and cannot address the application of restrictions imposed by provisions of law outside its jurisdiction.

This advisory opinion is based on the facts presented. It is limited to questions arising under Chapter 102. and Sections 2921.42, 2921.421, and 2921.43 of the Revised Code, and does not purport to interpret other laws or rules.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that: (1) Division (E) of Section 102.03 of the Revised Code does not prohibit a publicly employed electrical safety inspector from teaching a recertification class for electrical contractors who work within the inspector's jurisdiction if the inspector receives no compensation for his services

and follows the constraints discussed below; (2) Division (E) of Section 102.03 of the Revised Code does not prohibit a publicly employed electrical safety inspector, who follows the constraints discussed below, from receiving compensation for teaching a recertification class for electrical contractors who do not work within, and are not subject to, the inspector's jurisdiction; (3) Division (E) of Section 102.03 of the Revised Code prohibits a publicly employed electrical safety inspector from receiving compensation for teaching a recertification class for electrical contractors who work within the inspector's jurisdiction; and (4) Division (A)(1) of Section 2921.43 of the Revised Code prohibits a public servant, including a publicly employed electrical safety inspector, from receiving compensation for teaching recertification classes to any party, from anyone other than the public agency he serves, if the public servant is required to teach recertification classes as a part of his public job duties.

Sister Mary Andrew Matesich

Sister Mary Andrew Matesich, Chair
Ohio Ethics Commission