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THE JOINT LEGISLATIVE ETHICS COMMITTEE

Advisory Opinion 95-002
March 7, 1995

Syllabus by the Committee:

- (1) Neither division (A) nor (B) of Section 102.04 of the Revised Code prohibit a member of the General Assembly from accepting employment with a state college or university;
- (2) Division (D) of Section 102.03 of the Revised Code prohibits a member of the General Assembly who has accepted a position with a college or university from using his position as a member of the General Assembly to secure anything of value of the college or university, or for himself in the performance of his duties for the college or university;
- (3) Division (D) of Section 102.03 of the Revised Code prohibits a member of the General Assembly from using the authority or influence of his office to secure for himself employment with a college or university.

This opinion is in response to your request for an advisory opinion from the Joint Legislative Ethics Committee. The opinion is based on the following facts and question. You are a member of the General Assembly and you have asked if a member of the General Assembly can also be an employee of a state university.

There is no specific prohibition contained in Chapter 102 prohibiting a member's employment with a state college or university. There are, however, several provision contained in Chapter 102. which might potentially prohibit such employment. One potential prohibition

which pertains to the situation is enumerated in R.C. 102.04(A) which provides no person elected to an office of the General Assembly 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 that is before the General Assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state. However, one of the threshold requirements contained in R.C. 102.04(A) is that the member must render the service personally "in any case, proceeding, application, or other matter." You have stated the position is part-time and you would be responsible for alumni relations. The work you have described is clearly not a "case, proceeding or application." The phrase "other matter" is not specifically defined in section 102.04. However, "matter" is defined in R.C. 102.03, for purposes of that section, to include any case, proceeding, application, determination, issue, question, or the proposal, consideration, or enactment of statutes, or constitutional amendments. Although not directly applicable, the definition contained in R.C. 102.03 is persuasive. Based upon the above definitions, the position you have described and the work you are expected to perform does not fall within the purview of R.C. 102.04(A) and is therefore not prohibited under this provision. The member is cautioned to perform only those duties enumerated in the contract with the college or university.

A second potential prohibition is found in R.C. 102.04(B) which prohibits a member of the General Assembly from selling, except through competitive bidding, any goods or services to any instrumentality of the state, which would include a state college or university. The term "services" is not defined in R.C. 102.04. Although the term "services" could encompass almost any employment situation, the Committee feels a better view is to limit the definition to include only professional services that are similar to goods. For example, services would include plumbing, carpet cleaning, or copier repair services as opposed to merely holding a position with a state institution. Therefore, the Committee finds R.C. 102.04(B) does not prohibit a member of the General Assembly from accepting a position with a state institution.

Although not prohibited from being employed by a state institution, the Committee further advises that under R.C. 102.03(E) and (F), the compensation a member receives must not

be of "such a character so as to manifest a substantial and improper influence upon him with respect to his duties." The Committee cautions the member to avoid substantial compensation from a party that is interested in matters before, regulated by, or doing or seeking to do business with the General Assembly.

Next, a member's conduct, with respect to the member's employment with a state institution, is also conditioned by R.C. 102.03(D). The member is prohibited from making recommendations or otherwise using the member's position, formally or informally, to secure anything of value for the college or university with which he is seeking or has accepted employment. Additionally, the member is prohibited from: (1) using General Assembly time, facilities, or resources to perform work for a college or university; (2) receiving compensation for services rendered on projects that he has recommended in his official capacity with the General Assembly; (3) rendering services for compensation that are his duty to provide as a member of the General Assembly; and (4) refraining from rendering any service or otherwise performing his duties with the General Assembly in order to secure a position with a college or university.

Next, division (A) of Section 102.03 of the Revised Code provides, in pertinent part:

No present or former public official or employee shall, during his public employment or service or for twelve months thereafter, represent a client or act in a representative capacity for any person on any matter in which he personally participated as a public official or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion.... As used in this division, "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. As used in this division, "represent" includes any formal or informal appearance before, or any written or oral communication with any public agency on behalf of any person.

Therefore, a member of the General Assembly who is employed by a state institution is prohibited by R.C. 102.03(A) from representing his employing college or university or any other

person before the General Assembly or any other public agency on any matter in which he personally participated as a member of the General Assembly.

Lastly, R.C. 102.03(B) reads:

No present or former public official or employee shall disclose or use, without appropriate authorization, any information acquired by him in the course of his official duties which is confidential because of statutory provision, or which has been clearly designated to him as confidential when such confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary to the proper conduct of government business.

Therefore, a member of the General Assembly who is employed by a college or university is prohibited from disclosing confidential information to his employing college or university or any other party, or using such confidential information, without appropriate authorization. No time limitation exists for this prohibition, and it is effective while the member serves with the General Assembly and after he leaves the General Assembly.

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

Accordingly, the Committee finds and you are so advised that (1) Neither division (A) nor (B) of Section 102.04 of the Revised Code prohibit a member of the General Assembly from accepting employment with a state college or university; (2) Division (D) of Section 102.03 of the Revised Code prohibits a member of the General Assembly who has accepted a position with a college or university from using his position as a member of the General Assembly to secure anything of value of the college or university, or for himself in the performance of his duties for the college or university; (3) Division (D) of Section 102.03 of the Revised Code prohibits a member of the General Assembly from using the authority or influence of his office to secure for himself employment with a college or university.



William G. Batchelder, Chairman
Joint Legislative Ethics Committee