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THE JOINT LEGISLATIVE ETHICS COMMITTEE

Advisory Opinion 96-003
May 16, 1996
(corrected version)

Syllabus by the Committee:

- (1) R.C. 102.03(A)(4) does not prohibit a former member or employee of the General Assembly from being employed by an entity that represents persons before the General Assembly;
- (2) R.C. 102.03(A)(4) does not prohibit the new employer of a former member or employee from continuing to represent persons before the General Assembly;
- (3) The term "representation" is broadly defined for purposes of R.C. 102.03(A)(4) and includes, although not limited to, appearances at formal hearings; informal lobbying of members and employees of the General Assembly; written documents including formal and informal documents, letters and notes; and contacts made by other persons "on behalf of" the former member or employee; and
- (4) R.C. 102.03(A)(4) does not prohibit the representation of persons before the General Assembly on non-legislative matters.

Jurisdiction and Question Presented

Pursuant to sections 101.34 and 102.08 of the Revised Code that direct the Joint Legislative Ethics Committee to act as an advisory body to the members and employees of the General Assembly on questions relating to ethics, conflicts of interest, and financial disclosure, the Joint Legislative Ethics Committee advises the members and employees of the General Assembly on the following questions regarding R.C. 102.04(A)(4), the revolving door statute: (1) Can a member or employee accept employment with an entity or individual that lobbies members of the General Assembly; (2) What constitutes "representation"; and (3) Do non-legislative "matters" fall under the prohibition?

Background

R.C. 102.03(A)(4), the revolving door statute, provides:

(4) For a period of one year after the conclusion of his employment or service as a member or employee of the general assembly, no former member or employee of the general assembly shall represent, or act in a representative capacity for, any person on any matter before the general assembly, any committee of the general assembly, or the controlling board. Division (A)(4) of this section does not apply to or affect a person who separates from service with the general assembly on or before December 31, 1995. As used in division (A)(4) of this section, "person" does not include any state agency or political subdivision of the state.

(5)..... As used in division (A)(4) of this section, "matter" includes the proposal, consideration, or enactment of statutes, resolutions, or constitutional amendments. As used in division (A) of this section, "represent" includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person.

(6) Nothing contained in division (A) of this section shall prohibit, during such period, a former public official or employee from being retained or employed to represent, assist, or act in a representative capacity for the public agency by which he was employed or on which he served.

(7) Division (A) of 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 similar documents.

Consideration of the Issues

This Committee, in Advisory Op. 95-018, was asked to consider two aspects of R.C. 102.03(A)(4): (1) what constituted a person's "conclusion of service or employment" and (2) the state agency exception. In generally discussing the statute, the Committee held:

The statutory language in R.C. 102.03(A)(4) is very clear. If a member or employee of the General Assembly concludes his or her employment or service with the General Assembly after December 31, 1995, that person is prohibited from representing a person before the General Assembly, any committee of the General Assembly, or the controlling board on the proposal, consideration, or enactment of statutes, resolutions, or constitutional amendments for the period of one year after separation from the General Assembly.

The Committee shall address the following questions within the confines of this definition.

Acceptance of Employment

The first question posed is whether a member or employee may accept employment with an entity or person who is represented themselves or who represents a variety of clients before the General Assembly? Related to this issue, assuming acceptance of employment is valid, is whether the employer is now prohibited from representing persons before the General Assembly because of the former member or employee's affiliation with the employer?

As noted above, R.C. 102.04(A)(4) prohibits the representation of a person by the former member or employee personally, it does not prohibit the *acceptance* of employment with a person who represents others before the General Assembly. A member or employee may be associated with an employer who represents clients before the General Assembly without

personally representing those clients. Therefore, a former member or employee may be employed by an entity that represents persons before the General Assembly.

Although the member or employee may be associated with the employer, the question arises whether this association now precludes the employer from representing persons before the General Assembly. The language in R.C. 102.03(A)(4) clearly applies only to the former member or employee. R.C. 102.03(A)(4) does not impose a restriction upon the former member or employee's current employer, but rather restricts the actions the former member or employee may take on behalf of his or her employer during the 12-month period following his or her public service. Therefore, R.C. 102.03(A)(4) does not prohibit an employer from representing a person before the General Assembly.

What Constitutes "Representation"

"Representation" is defined to include "any former or informal appearance before, or any written or oral communication with, any public agency on behalf of any person." The former member or employee may not, as an employee of the new employer, engage in any activities that would be deemed to constitute "representation" under R.C. 102.03(A)(4). "Representation" is broadly defined and includes many activities.

As it is used here, representation would include, but is not limited to, activities ranging from an appearance on behalf of a private client in a formal proceeding or hearing to informal lobbying of General Assembly personnel by telephone or in person. It also includes written communications ranging from formal documents to informal letters and notes. The prohibition would apply where a person, separate from the member or employee, contacted a member of the General Assembly "on behalf of" the former member or employee. In other words, the member or employee's former status may not be used by the new employer who is representing persons before the General Assembly. However, a person's name merely being listed on letterhead is not sufficient to be considered representation of another person.

What Constitutes A "Matter"

R.C. 102.03(A)(5) defines a "matter" to include the "proposal, consideration, or enactment of statutes, resolutions, or constitutional amendments." It is apparent that the term "matter" is limited and not broadly defined. Therefore, a former member or employee may represent, or act in a representative capacity, for a person on any matter not related to legislation.¹ For example, a former member or employee may contact members or employees of the General Assembly regarding the campaign of current member. Even contact regarding legislation may be made in limited circumstances. For example, a member or employee may contact members or employees of the General Assembly in order to obtain information regarding matters before the General Assembly. However, it must be noted that this example is limited to the *collection* of information, the former member or employee may not discuss any positions held by the client.

This advisory opinion is based on the facts presented. It 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.

Conclusion

Accordingly, the Committee finds, and the members and employees of the General Assembly are so advised that (1) R.C. 102.03(A)(4) does not prohibit a former member or employee of the General Assembly from being employed by an entity that represents persons before the General Assembly; (2) R.C. 102.03(A)(4) does not prohibit the new employer of a former member or employee from continuing to represent persons before the General Assembly; (3) The term "representation" is broadly defined for purposes of R.C. 102.03(A)(4) and includes,


¹ The term legislation as used here includes statutes, resolutions, or constitutional amendments.

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but is not limited to, appearances at formal hearings; informal lobbying of members and employees of the General Assembly; written documents including formal and informal documents, letters and notes; and contacts made by other persons "on behalf of" the former member or employee; and (4) R.C. 102.03(A)(4) does not prohibit the representation of persons before the General Assembly on non-legislative matters.



Richard H. Finan, Chairman
Joint Legislative Ethics Committee