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**THE JOINT LEGISLATIVE ETHICS COMMITTEE**

Advisory Opinion 97-001  
January 15, 1997

**Syllabus by the Committee:**

- (1) A former member or employee of the General Assembly, for twelve months following their separation from the General Assembly, is prohibited from representing, or acting in a representative capacity for, a person before an executive agency on a matter that is before the General Assembly, any committee of the General Assembly, or the Controlling Board;
- (2) A former member or employee is not prohibited, during the first twelve months after separating from the General Assembly, from representing, or acting in a representative capacity for, a person before an executive agency where the subject matter of the representation is not a matter that is before the General Assembly, any committee of the General Assembly, or the Controlling Board;
- (3) A state institution of higher education, as defined in R.C. 3345.011, is not a state agency as that term is used in R.C. 102.03(A)(4); and
- (4) A former member or employee of the General Assembly may not, within the first twelve months after separating from the General Assembly, represent, or act in a representative capacity for, a state institution of higher education on any matter before the General Assembly, any committee of the General Assembly, or the Controlling Board.

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 of the General Assembly on the following questions: (1) May a former member or employee of the General Assembly represent a person before an executive agency and (2) May a former member or employee of the General Assembly represent a state university or college on a matter pending before the General Assembly, a committee of the General Assembly, or the Controlling Board?

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 two prior opinions discussed R.C. 102.03(A)(4), the revolving door statute. In Advisory Op. 95-018, the Committee was asked to consider what constituted a person's "conclusion of service or employment" and the state agency exception. In Advisory Op. 96-003, the Committee discussed, among other matters, what was included within the meaning of "representation." In generally discussing the statute, the Committee held at pages 2 and 3 of Advisory Op. 95-018:

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.

### Representation Before Executive Agencies

The member has asked whether a former member or employee of the General Assembly may represent a person before an executive agency<sup>1</sup> within the twelve month period following

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<sup>1</sup> "Executive agency" means the office of an elected executive official, a department created under section 121.02 of the Revised Code, or any other state agency, department, board, or commission controlled or directed by an elected executive official or otherwise subject to his authority. "Executive agency" does not include any court, the general assembly, or the controlling board. R.C. 121.60(F).

their separation from the General Assembly. The answer to this question is dependent upon the subject matter of the representation. R.C. 102.03(A)(4) prohibits a member or employee from representing, or acting in a representative capacity for, any person on any *matter* before the General Assembly, any committee of the General Assembly, or the Controlling Board for twelve months after separating from the General Assembly. For purposes of R.C. 102.03(A)(4), "matter" includes the proposal, consideration, or enactment of statutes, resolutions, or constitutional amendments.

Therefore, a former member or employee is prohibited from representing a person where the subject matter of the representation is the proposal, consideration, or enactment of statutes, resolutions, or constitutional amendments for twelve months after their separation from the General Assembly. Since this prohibition is based on the subject matter of the representation, and not on the public official sought to be influenced, this prohibition extends equally to an attempt to influence an executive agency, as well as a member of the General Assembly. For example, a former member would be prohibited from representing a person before the Governor where the subject matter was pending legislation. Although the contact would be with an executive official, the member would nonetheless be representing a person on a *matter before the General Assembly, any committee of the General Assembly, or the Controlling Board.*

This interpretation is in accord with the statutory provisions of R.C. 101.70 *et seq.*, the laws governing legislative agents and their employers. The activity sought to be prohibited with the enactment of R.C. 102.03(A)(4) is activity that would require a person to register under R.C. 101.70 *et seq.* Under R.C. 101.70 *et seq.*, an individual is required to register as a legislative agent if they are engaged by an employer and are attempting to influence legislation<sup>2</sup> by direct

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<sup>2</sup> As used in R.C. 101.70 *et seq.*, "legislation" means bills, resolutions, amendments, nominations, and any other matter pending before the general assembly, any matter pending before the controlling board, or the executive approval or veto of any bill acted upon by the general assembly. R.C. 101.70(B).

communication with any member of the General Assembly, any member of the Controlling Board, the *governor, the director of any department listed in section 121.02 of the Revised Code, or any member of the staff of any public officer or employee listed in this division.* R.C. 101.70(E). Therefore, R.C. 101.70 *et seq.* contemplates contact with officials and employees of the executive branch on matters relating to the General Assembly.

Where the subject matter of the representation is an executive agency decision<sup>3</sup>, and is not a matter that is before the General Assembly, any committee of the General Assembly, or the Controlling Board, the former member or employee is not prohibited from representing a person on the executive agency matter before an executive agency. This interpretation is in accord with R.C. 121.60 *et seq.*, the laws governing executive agency lobbyists and their employers. Under R.C. 121.60 *et seq.*, an individual is required to register as an executive agency lobbyist if they are engaged by an employer and are attempting to influence executive agency decisions by direct communication with an elected executive official, the director of any department listed in section 121.02 of the Revised Code, any executive agency official, or a member of the staff of any public officer or employee listed in this division.

Therefore, a former member or employee is not prohibited, during the first twelve months after separating from the General Assembly, from representing, or acting in a representative capacity for, a person before an executive agency where the subject matter of the representation is not a matter that is before the General Assembly, any committee of the General Assembly, or the Controlling Board. The Committee would also note that where a former member or

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<sup>3</sup> "Executive agency decision" means a decision of an executive agency regarding the expenditure of funds of the state or of an executive agency with respect to the award of a contract, grant, lease, or other financial arrangement under which such funds are distributed or allocated, or a regulatory decision of an executive agency or any board or commission of the state. R.C. 121.60(G).

employee is representing a person on an executive agency decision, the member or employee is required to register in accordance with R.C. 121.62.

Therefore, a former member or employee of the General Assembly, for twelve months following their separation from the General Assembly, is prohibited from representing, or acting in a representative capacity for, a person before an executive agency on a matter that is before the General Assembly, any committee of the General Assembly, or the Controlling Board.

State Universities and Colleges

An exception to the prohibition set forth in R.C. 102.03(A)(4) is representation on a matter before the General Assembly on behalf of a state agency or a political subdivision. In Advisory Op. 95-018, the Committee held at paragraph 3 of the Syllabus:

A member or employee of the General Assembly is not prohibited from representing a state agency or political subdivision of the state 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 after the conclusion of the member or employees service or employment with the General Assembly.

The member has asked whether state universities and colleges are included within the term "state agency" or "political subdivision" as those terms are used in R.C. 102.03(A)(4).

The term political subdivision is not defined for purposes of Chapter 102.; therefore, we must look to R.C. 1.42 which provides:

Words and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.

As the phrase is commonly used throughout the Revised Code, the term political subdivision generally means a municipal corporation, county, township, city, village, or school district. (See, e.g., R.C. 3501.01(T) and R.C. 2744.01(F)). It would appear from this definition, a state

institution of higher education is not generally included within the meaning of "political subdivision."

Therefore, it must be determined whether the term "state agency" encompasses state institutions of higher education. The term state agency is not specifically defined either for purposes of Chapter 102.; therefore, we must look to R.C. 1.60 which states:

As used in Title 1 of the Revised Code, "state agency," except as otherwise provided in the title, means every organized body, office, or agency established by the laws of the state for the exercise of any function of state government.

Arguably, state institutions of higher education could fall within this definition; however, the Committee feels a better view is to examine the term as is it used within the confines of R.C. 101.70 *et seq.* since, as noted above, R.C. 102.03(A)(4) is inextricably related to R.C. 101.70 *et seq.* State institutions of higher education are specifically excluded from the definition of state agency as that term is used in certain provisions of R.C. 101.70 *et seq.* R.C. 101.72(E) states:

Except as otherwise provided in this division, a registration fee of ten dollars shall be charged for filing an initial registration statement. ... An officer or employee of a state agency who actively advocates in his fiduciary capacity as a representative of that state agency need not pay the registration fee prescribed by this division or file expenditure statements under section 101.73 of the Revised Code. *As used in this division, "state agency" does not include a state institution of higher education as defined in section 3345.031 [3345.03.1] of the Revised Code. (Emphasis added.)*

Therefore, a state institution of higher education is required to comply with all of the same requirements as any other employer of a legislative agent that is not a state agency. First, educational institutions are required to pay a registration fee, unlike all other state agencies. Secondly, and more importantly, educational institutions are accountable for all expenditures made to, or on behalf of, all public officials and employees falling within the purview of R.C. 101.70 *et seq.* The inclusion of state institutions of higher education in required reporting is a

clear indication that, for purposes of lobbying, educational institutions are not considered to be on the same level as the more typical state agencies.

Therefore, the Committee finds that a state institution of higher education, as defined in R.C. 3345.011, is not a state agency as that term is used in R.C. 102.03(A)(4). Consequently, a former member or employee of the General Assembly may not, within the first twelve months after separating from the General Assembly, represent, or act in a representative capacity for, a state institution of higher education on any matter before the General Assembly, any committee of the General Assembly, or the Controlling Board.

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: (1) A former member or employee of the General Assembly, for twelve months following their separation from the General Assembly, is prohibited from representing, or acting in a representative capacity for, a person before an executive agency on a matter that is before the General Assembly, any committee of the General Assembly, or the Controlling Board; (2) A former member or employee is not prohibited, during the first twelve months after separating from the General Assembly, from representing, or acting in a representative capacity for, a person before an executive agency where the subject matter of the representation is not a matter that is before the General Assembly, any committee of the General Assembly, or the Controlling Board; (3) A state institution of higher education, as defined in R.C. 3345.011, is not a state agency as that term is used in R.C. 102.03(A)(4); and (4) A former member or employee of the General Assembly may not, within the first twelve months after separating from the General Assembly, represent, or act in a representative capacity for, a state



institution of higher education on any matter before the General Assembly, any committee of the General Assembly, or the Controlling Board.

A handwritten signature in black ink, appearing to read 'R. Finan', written over a horizontal line.

Richard H. Finan, Chairman  
Joint Legislative Ethics Committee