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**THE JOINT LEGISLATIVE ETHICS COMMITTEE**

Advisory Opinion 97-005  
July 31, 1997

**Syllabus by the Committee:**

Under the facts presented herein, the requesting member is not prohibited by Section 4 of Article II of the Ohio Constitution from being appointed as a member of the Ohio Industrial Commission.

**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 question: May a member of the General Assembly be appointed to the Ohio Industrial Commission?

As noted, section 101.34 of the Revised Code authorizes the Committee to advise the members of the General Assembly on conflicts of interest. The question presented here involves a potential conflict of interest and is properly within the Committee's jurisdiction under R.C. 101.34. The potential conflict of interest arises primarily under Art. II, §4 of the Ohio Constitution. This section is not part of the Ohio Ethics Law, Chapter 102, and sections 2921.42 and 2921.43 of the Revised Code.

Section 102.08 of the Revised Code enables the Committee to grant immunity from criminal prosecution and civil action through its opinions only with respect to alleged violations of Chapter

102. and sections 2921.42 and 2921.43. Therefore, although the Committee has jurisdiction to answer the question under Art. II, §4, this opinion may be relied on for immunity from criminal prosecution or civil action only with respect to matters arising under Chapter 102. and sections 2921.42 and 2921.43 of the Revised Code and provides no immunity with respect to matters arising under Art. II, §4.

#### Background

The Ohio Industrial Commission was created in 1913. In 1993, its membership was reduced from five to three. The three members are appointed by the Governor, with the advice and consent of the Senate. R.C. 4121.02(A). After the initial appointment of the first three members, the terms of office are six years. R.C. 4121.02(B). Pursuant to the current R.C. 4121.03, the members of the commission elect one of its members as chairperson for a term of one year.

#### Consideration of the Issues

##### Art. II, §4 of the Ohio Constitution

The appointment of a member of the General Assembly to a public office necessarily involves a review of Art. II, §4, which provides:

No member of the General Assembly shall, during the term for which he was elected, unless during such term he resigns therefrom, hold any public office under the United States, or this state, or a political subdivision thereof; but this provision does not extend to officers of a political party, notaries public, or officers of the militia or of the United States armed forces.

No member of the General Assembly shall, during the term for which he was elected, or for one year thereafter, be appointed to any public office under this state, which office was created or the compensation of which was increased, during the term for which he was elected.

There can be no question that membership on the Industrial Commission is a *public office* as that term is used in Art. II, §4. The Ohio Supreme Court in *State ex rel. Meshel v. Keip* (1981), 66

Ohio St.2d 379, at pages 387-388, stated:

*In State ex rel. Herbert v. Ferguson* (1944), 142 Ohio St. 496, this court, at page 501, stated,

"A 'civil office' or a public office for a civil nature, as defined by the Ohio cases, is a charge or trust conferred by public authority for a public purpose, with independent and continuing duties, involving in their performance the exercise of some portion of the sovereign power."

Although the term used in Section 4 of Article II is "public office," the meaning is essentially the same as "civil office." An exercise of some portion of the sovereign power must be involved.

*In State ex re. Landis v. Bd. Of County Commrs.* (1917), 95 Ohio St. 157, this court stated, at pages 160-161, 115 N.E. 919:

\*\*\*If specific statutory and independent duties are imposed upon an appointee in relation to the exercise of the police powers of the state, if the appointee is invested with independent power in the disposition of public property or with power to incur financial obligations upon the part of the county or state, if he is empowered to act in those multitudinous cases involving business or political dealings between individuals and the public, wherein the latter must necessarily act through an official agency, then such functions are a part of the sovereignty of the state."

Under R.C. 4121 *et seq.* and the functions of the Industrial Commission enumerated therein, the Commission exercises some portion of the sovereign power and is therefore a public office for purposes of Art. II, §4.

The first paragraph of §4 prohibits dualism in office. It is assumed the member will resign from the General Assembly before being sworn into the Industrial Commission position. Therefore, this paragraph would not be applicable. However, should the member fail to resign from the General Assembly before being sworn in as a member of the Commission, the member would forfeit his membership in the General Assembly.

The second paragraph of Section 4 of Article II prohibits conflicts of interest that may arise where the member may benefit from legislative action undertaken during his or her elected term, and for one year thereafter. Relevant to the issues presented herein, the member was a member of the General Assembly during the year 1996, and is currently a sitting member of the 122<sup>nd</sup> General Assembly which encompasses the years 1997 and 1998. Therefore, any legislation which was or is enacted during 1996-98 which creates a seat on the Industrial Commission or increases the compensation of a seat would trigger the prohibition of §4 with respect to the member.

The only legislation regarding the relevant sections of R.C. 4121 that has been passed during the years 1996 and 1997 is Am. Sub. H. B. 362 which was recently passed by the 122<sup>nd</sup> General Assembly and becomes effective October 1, 1997. As noted above, the seats on the Commission were created in 1913 and the minimum compensation set for each position, with a reduction in the number of seats and an increase in the compensation in 1993. A review of Am. Sub. H. B. 362 reveals there has been no change in either the seats or the compensation with the enactment of this bill.<sup>1</sup> Therefore, a seat on the Ohio Industrial Commission has not been created, or the compensation increased, during 1996, or to date in 1997. Hence, the member is not prohibited under Section 4 of Article II of the Ohio Constitution from being appointed to a seat on the Ohio Industrial Commission.

R.C. 102.03

In addition to the prohibitions found in Art. II, §4, certain provisions of the Ohio Ethics Law are relevant to potential ethical considerations with respect to the member's conduct in securing the position.

102.03(D), (E), and (F) provide:

(D) No public official or employee shall use or authorize the use of the authority or influence of his office or employment to secure

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<sup>1</sup> Am. Sub. H. B. 362 changes, among other things, the appointing authority of the chairperson from the Commission members to the Governor. This opinion is limited to the question of whether the member may be appointed to the Industrial Commission, and does not address the issue of whether the member may be appointed by the Governor as chairman after the effective date of October 1, 1997.

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 him with respect to his 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 him with respect to his duties.

(F) No person shall promise or give to a public official or employee anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties.

The cumulative effect of these three sections is that a member should avoid taking any action that would result in their membership in the General Assembly being used to secure anything of value or the promise of anything of value. Thus, the member is advised not to use his membership in the General Assembly to secure a position on the Commission.

This written 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 member is so advised that, under the facts presented herein, the member is not prohibited by Section 4 of Article II of the Ohio Constitution from being appointed as a member of the Ohio Industrial Commission.



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William G. Batchelder, Chairman  
Joint Legislative Ethics Committee