

OPINION NO. 83-028

Syllabus:

R.C. 5126.03(A), which prohibits all elected public officials not excluded from the definition of "public official or employee" in R.C. 102.01(B) from serving on a board of mental retardation and developmental disabilities, prohibits a city council member from serving on such a board.

To: Roger L. Kline, Pickaway County Prosecuting Attorney, Circleville, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, May 25, 1983

I have before me your question whether "elected public officials as used in Ohio Revised Code Section 5126.03(A)(1) [refers] to elected city councilmen or just to county elected public officials."

R.C. 5126.03(A) reads in part: "The following individuals shall not serve as members of county boards of mental retardation and developmental disabilities: (1) Elected public officials, except for those excluded from the definition of public official or employee in division (B) of section 102.01 of the Revised Code." Clearly, a city council member is an elected public official. See State ex rel. v. Kearns, 47 Ohio St. 566, 25 N.E. 1027 (1890); 1979 Op. Att'y Gen. No. 79-111. See also R.C. 731.01; R.C. 731.02 ("[e]ach member of the legislative authority. . . shall not hold any other public office. . . ." (emphasis added)); R.C. 731.03. R.C. 102.01(B),¹ which defines "public official or employee" for purposes of R.C. Chapter 102, the Ohio Ethics Law, does not exclude city council members, but indeed has been construed as including city council members. See Ohio Ethics Commission, Advisory Opinions No. 83-002, No. 82-005, No. 78-001, No. 76-005.

Having concluded that a city council member is an elected public official who has not been excluded from the definition of "public official or employee" under R.C. 102.01(B), I turn to the question whether the word "county" may be read into R.C. 5126.03(A)(1) as qualifying "elected public officials." Under such a reading, R.C. 5126.03(A)(1) would prohibit only county elected public officials from serving on boards of mental retardation and developmental disabilities. It is a well-established principle of statutory construction that, in interpreting a statute, words used may not be deleted, nor may words not used be inserted. See Columbus-Suburban Coach Lines, Inc. v. PUCO, 20 Ohio St. 2d 125, 254 N.E.2d 8 (1969). This principle was recently reiterated in Dougherty v. Torrence, 2 Ohio St.3d 69, ___ N.E.2d ___ (1982), wherein the court decided that the statutory use of the words "members of the fire department" and "firemen" must be read to include volunteer firemen since there was no indication that volunteer firemen were to be excluded from the statute or otherwise differentiated from other types of firemen. The court in Dougherty also pointed out that, when the wording of a statute is unambiguous, interpretation is not required, but rather effect must be given to the words used.

¹ R.C. 102.01(B) reads:

"Public official or employee" means any person who is elected or appointed to an office or is an employee of any public agency. "Public official or employee" does not include a person elected or appointed to the office of precinct, ward, or district committee member under section 3517.03 of the Revised Code, any presidential elector, or delegate to a national convention. "Public official or employee" does not include a person who is a teacher, instructor, professor, or any other kind of educator whose position does not involve the performance of, or authority to perform, administrative or supervisory functions.

Thus, I do not believe that the word "county" may be added to R.C. 5126.03(A)(1) as qualifying "elected public officials." R.C. 5126.03(A)(1), which prohibits "elected public officials, except for those excluded from the definition of public official or employee in division (B) of section 102.01 of the Revised Code," from serving on a board of mental retardation and developmental disabilities, prohibits all public officials not excluded under R.C. 102.01(B) from so serving. Cf. R.C. 5126.03(D) (prohibiting a person from serving as a member or employee of a board of mental retardation and developmental disabilities if a member of his immediate family serves as a county commissioner of the county served by the board, thus indicating that the General Assembly differentiates among particular types of public officials when it so intends). Accordingly, a city council member may not serve on a board of mental retardation and developmental disabilities.

In conclusion, it is my opinion, and you are advised, that R.C. 5126.03(A), which prohibits all elected public officials not excluded from the definition of "public official or employee" in R.C. 102.01(B) from serving on a board of mental retardation and developmental disabilities, prohibits a city council member from serving on such a board.