



OHIO ETHICS COMMISSION
THE ATLAS BUILDING
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COLUMBUS, OHIO 43215-2940
(614) 466-7090

October 9, 1992 Informal Opinion 1992-INF-1009-1

John F. Bender
Chief Elections Counsel
Office of the Secretary of State

Dear Mr. Bender:

You have asked whether Section 2921.42 of the Revised Code prohibits a county board of elections from employing a family member of a member of the board as a precinct election official or as an election-day temporary employee.

You have stated, by way of history, that Section 3501.22 of the Revised Code requires a county board of elections to appoint six precinct election officials for each precinct to administer elections on election day. You have stated that there are over 13,000 precincts in Ohio, and that it is difficult, if not impossible, to find qualified electors willing to serve in all precincts. You have stated that many boards of elections are left with few, if any, alternatives to employing a family member of a board member to serve as a precinct election official. You have stated that these individuals are often willing to serve without compensation, but you believe that counties are not permitted to waive compensation even if requested. See R.C. 3501.28; 1933 Ohio Attorney General Opinion No. 1602, p. 1457; 1931 Ohio Attorney General Opinion No. 3010, p. 330.

As you note, Section 3501.22 of the Revised Code requires a county board of elections, by majority vote, to appoint for each election precinct six competent electors, who are residents of the county, as judges "after careful examination and investigation as to their qualifications." These electors constitute the election officers of the precinct. Id. The term of the election officers shall be for one year. Id. See also R.C. 3501.27 (qualifications and training of precinct election officials); R.C. 3501.28 (compensation of election officers). A board of elections also has the authority to appoint and compensate employees. See R.C. 3501.11(D); R.C. 3501.14. R.C. 3501.14 states that the board may employ additional employees, when necessary, for part time only at the prevailing rate of pay for such services.

Section 2921.42(A)(1) of the Revised Code prohibits a public official from authorizing, or using the authority or influence of his position to secure authorization of, a public contract in which a member of his family has an interest. A member of a county board of elections is a public official who is subject to the

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prohibitions of Section 2921.42. See R.C. 2921.01(A); Ohio Ethics Commission Advisory Opinions No. 87-002 and 92-006.

A "public contract" is defined for purposes of Section 2921.42 in Division (E) of that Section to include the purchase or acquisition, or a contract for the purchase or acquisition, of goods or services by or for the use of the State or a political subdivision thereof. The Ethics Commission has held that the employment of, or purchase of services from, an individual by the State or a political subdivision, or a contract for his employment or for his services, constitutes a "public contract" for purposes of Section 2921.42, since the State or political subdivision is acquiring or purchasing the services of the individual. See Advisory Opinions No. 80-001, 81-004, 85-002, 85-015, 88-001, 90-010, and 92-012. The Ethics Commission has held, therefore, that R.C. 2921.42(A)(1) prohibits a public official from authorizing, or using the authority or influence of his position to secure, the employment of, or purchase of services from, a member of his family, or a contract for the employment of, or purchase of services from, a member of his family. See Advisory Opinions No. 80-001, 81-004, 85-002, 85-015, 90-005, 90-010, and 92-012. As the Commission held in Advisory Opinion No. 90-010, R.C. 2921.42 does not limit its prohibitions or definition of public contract to a specific manner or means by which a political subdivision acquires or purchases the services. "An employment contract could be for full-time, part-time, temporary, or permanent employment, in the classified or unclassified civil service, or non-civil service in nature." Id. Therefore, the prohibitions of Division (A)(1) apply to a board member, regardless of whether his family member would serve in a temporary or permanent capacity with the board.

Also, Section 102.03(D) of the Revised Code prohibits a public official or employee from using the authority or influence of his office or employment to secure anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his official duties. A member of a county board of elections is also subject to R.C. 102.03(D). See R.C. 102.01(B) and (C); Advisory Opinion No. 92-006. The Ethics Commission has interpreted R.C. 102.03(D) as prohibiting a public official from participating in any matter which would provide a definite pecuniary benefit for a member of his family where the official's objectivity and independence of judgment in the performance of his duties could be impaired. See Advisory Opinions No. 89-008, 90-004, 92-010, and 92-012. R.C. 102.03(D) prohibits a public official from using the authority or influence of his office, formally or informally, to secure the employment of a member of his family, or the purchase of services from a member of his family. See generally Advisory Opinions No. 90-004 and 92-012.

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The Ethics Law does not absolutely prohibit the family members of board members from being employed by the board. In Advisory Opinion No. 90-010, the Ethics Commission explained the nature of the prohibition of Section 2921.42(A)(1) as follows:

R.C. 2921.42(A)(1) is not a "no relatives policy" which determines eligibility for employment with a political subdivision on the basis of family relationships. . . . R.C. 2921.42(A)(1) does not prohibit a family member of a public official from being employed by the same political subdivision which the official serves; rather it prohibits the public official from taking any action to secure employment for his family member. The purpose of R.C. 2921.42(A)(1) is to prevent the possibility that a public official may show favoritism in the exercise of his discretionary, decision-making authority in authorizing a contract for public employment.

R.C. 2921.42(A)(1) does not per se prohibit a member of an official's family from being employed or hired by that official's public agency. Rather, R.C. 2921.42(A)(1) prohibits the public official from participating to authorize or secure the authorization of his family member's employment. Similarly, R.C. 102.03(D) does not absolutely prohibit the employment of a public official's family member by a public agency, but does prohibit the official from using the authority or influence of his office to secure the employment or hire.

It is my understanding that there is a belief that board members may hire their family members as election officers and election-day employees since the compensation which may be provided to the family members as election officers and temporary election-day employees is prescribed by statute, and the board exercises little discretion in setting such compensation. See R.C. 3501.28 (each election officer shall be paid at the same hourly rate, which shall not be less than that set by the Fair Labor Standards Act, provided that no election official shall be paid more than fifty-five dollars per day) and R.C. 3501.14 (part-time employees shall be employed "only at the prevailing rate of pay for such services"). Even though the statutes limit (but do not abrogate) the board's discretion in establishing the compensation for election officers and temporary employees, the board still exercises discretion and authority in deciding who will serve as officers and employees. If a member of a board member's family is appointed or employed, he will be entitled to the compensation set by the board within the statutory limitations, and will financially benefit from his employment, even though other election officers and employees may benefit to the same extent. Therefore, a board member is prohibited from exercising his authority or influence to secure any position with the board for a member of his family,

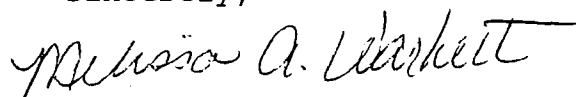
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regardless of the scope of the board's discretion in setting compensation for election officers and temporary employees. See generally Advisory Opinion No. 90-010 (R.C. 2921.42(A)(1) prohibits a city service and safety director from authorizing or using his authority or influence to secure the employment of his son by the city fire department even where the son would be hired pursuant to civil service qualifications and requirements).

Therefore, the family members of the members of the county board of elections are not prohibited from being employed by the county board. However, R.C. 2921.42(A)(1) and R.C. 102.03(D) prohibit a board member from formally participating in the authorization or approval of the county board's hire of his family members. R.C. 2921.42(A)(1) and R.C. 102.03(D) also prohibit a county board member from recommending, discussing, deliberating, or otherwise using the authority or influence or the power and prestige of his position, formally or informally, to secure the hire of a member of his family. See Advisory Opinion No. 92-012. He is prohibited from exerting his authority or influence over other board officials and board employees to secure the hire. Id. R.C. 2921.42 and 102.03(D) would prohibit the board members from misusing their positions in any way to secure the hire of their family members. For example, board members would be prohibited from entering into any arrangement whereby they agree to hire the family members of other board members in exchange for the hire of their own family members. See City of Parma v. Schroeder, 26 Ohio Op. 2d 119, 122 (C.P. Cuyahoga County 1963) (a public official cannot do indirectly that which he cannot lawfully do directly). The qualifications of family members must be considered in the same manner as those of other applicants for the positions, and the decision to hire a member of a board official's family must be made objectively and without favoritism. See also R.C. 3501.22 (a board of elections must give "careful examination and investigation as to . . . [the] qualifications" of election officers); R.C. 3501.27 (qualifications of election officers).

This informal advisory opinion was approved by the Ethics Commission at its meeting on October 9, 1992. It 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. If you have questions, or wish to request a formal opinion from the Commission, please contact me.

Sincerely,



Melissa A. Warheit
Executive Director