



## OHIO ETHICS COMMISSION

150 EAST BROAD STREET

COLUMBUS 43215

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Advisory Opinion No. : 80-003

June 11, 1980

### Syllabus by the Commission:

- 1) Division (A) of Section 102.03 of the Revised Code prohibits a school board member from representing or acting in a representative capacity for the automobile dealership by which he is employed, before the school district, on any matter in which he is directly concerned and in which he personally participates by a substantial and material exercise of administrative discretion in his capacity on the school board;
- 2) Division (D) of Section 102.03 of the Revised Code prohibits a school board member from voting or otherwise using or attempting to use his official position to secure approval of a contract for the purchase or service of school buses involving the automobile dealership by which he is employed;
- 3) Section 2921.42 of the Revised Code prohibits a school board member from knowingly authorizing, voting, or otherwise using the authority or influence of his office to secure approval of a public contract for the purchase or service of school buses involving the automobile dealership by which he is employed.

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In your request for an Ohio Ethics Commission Advisory opinion, you asked whether the Ohio Ethics Law and related statutes would prohibit an automobile dealership which employs a school board member from doing business with the school district.

The person in question is a member of the board of education of a local school district, and has been employed as a salesman for an automobile dealership for the past five years. The automobile company is a closely-held family corporation owned largely by the board member's father and mother; the board member has less than a five per cent interest in the corporation. The firm has sold buses to the school district through competitive bid and provided repair and maintenance service on buses sold to the school district since 1954.

The prohibitions of the Ohio Ethics Law and related statutes apply generally to any "public official or employee," which would include a member of a school district board of education (See: Ohio Ethics Commission Advisory Opinions No. 75-020 and 78-002).

Division (A) of Section 102.03 of the Revised Code prohibits a public official or employee from representing a client or acting in a representative capacity for any "person," which includes an individual or corporation, before the agency with which he serves, on any matter in which he is directly concerned and in which he personally participates by a substantial

and material exercise of administrative discretion. This provision would prohibit a school board member from representing or acting in a representative capacity for a closely-held automobile company by which he is employed, before the school district, on any matter over which the board of education exercises substantial discretion, including decisions on awarding contracts or issuing payments for the purchase or service of school buses.

Division (D) of Section 102.03 of the Revised Code prohibits a public official or employee from using or attempting to use his official position to secure anything of value for himself that would not ordinarily accrue to him in the performance of his official duties and that is of such character as to manifest a substantial and improper influence upon him with respect to his duties. This provision would prohibit a school board member from voting or otherwise using or attempting to use his official position to secure anything of value for himself, which would include voting on the issuance of contracts or the payment of bills for the purchase of school buses or services involving his employer, particularly since this is a closely-held family corporation.

Section 2921.42 of the Revised Code prohibits a public official from knowingly: 1) authorizing, voting, or otherwise using the authority or influence of his office to secure approval of a public contract in which he, a family member, or a business associate has an interest; and 2) having any interest in the profits or benefits of a public contract entered into by or for the use of the governmental entity with which he serves. In the instant case, Section 2921.42 of the Revised Code would prohibit a school board member from knowingly: 1) authorizing, voting, or using the authority or influence of his office to secure the approval of a contract for the purchase or service of school buses in which he, a member of his family, or any of his business associates has an interest; and 2) from having any personal interest in the profits or benefits of a public contract with the school district, even though he takes no official action in securing the contract. Although the Commission has held that an employee is not generally considered to be "interested" in the contracts of his employer, the facts of the instant case indicate that the school board member is "interested" in the contracts of the closely-held family business.

However, Division (C) of Section 2921.42 of the Revised Code provides an exemption from the prohibitions of that Section if all of the following criteria are met: 1) the subject of the contract is necessary supplies or services; 2) the supplies or services are unobtainable elsewhere for the same or a lower cost, or are furnished as a part of a continuing course of dealing established prior to the public officials association with the governmental entity; 3) the treatment accorded the governmental entity is either preferential or the same as that accorded other customers or clients in similar transactions; and 4) the entire transaction is conducted at arm's length, with full knowledge by the governmental entity of the interest of the public official, provided that he takes no part in the deliberations or decision with respect to the contract. These are factual determinations, and whether a particular transaction meets the criteria of Division (C) of Section 2921.42 of the Revised Code depends upon the facts and circumstances of the individual case.

In the instant case, a contract for the purchase or service of school buses would appear to be necessary for the school district. The buses would be unobtainable elsewhere for the same or lower cost if they are purchased through proper bidding procedures. In addition, there is a

continuing course of dealing established prior to the public official's election to the board of education. The treatment accorded the school district would appear to be the same as that accorded other customers of the automobile dealership in similar transactions. Therefore, if the transaction is conducted at arm's length, with full knowledge by the school board of the interest of the board member in question, and the board member takes no part in deliberations or decisions with respect to contracts involving school buses, the criteria for the exemption of Division (C) of Section 2921.42 of the Revised Code would be satisfied.

We conclude, therefore, that the Ohio Ethics Law and related statutes would not, per se, prohibit a school district board of education from contracting for school bus purchases or services from a company by which a member of the board of education is employed. However, the board member in question would be prohibited from representing the dealership before the board or participating in any discussions, decisions, or votes in matters before the board of education regarding school bus purchases or service. In addition, we must caution that such transactions could create the appearance of impropriety.

Finally, your attention is directed to Section 3313.33 of the Revised Code (See: Ohio Ethics Commission Advisory Opinion No. 78-006).

The conclusions of this advisory opinion are based on an examination of the facts presented. The Ohio Ethics Commission cautions that its advisory opinions may be relied upon only with respect to questions arising under Chapter 102. and Section 2921.42 of the Revised Code, and do not purport to interpret other laws or rules.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that:

- 1) Division (A) of Section 102.03 of the Revised Code prohibits a school board member from representing or acting in a representative capacity for the automobile dealership by which he is employed, before the school district, on any matter in which he is directly concerned and in which he personally participates by a substantial and material exercise of administrative discretion in his capacity on the school board;
- 2) Division (D) of Section 102.03 of the Revised Code prohibits a school board member from voting or otherwise using or attempting to use his official position to secure approval of a contract for the purchase or service of school buses involving the automobile dealership by which he is employed;
- 3) Section 2921.42 of the Revised Code prohibits a school board member from knowingly authorizing, voting, or otherwise using the authority or influence of his office to secure approval of a public contract for the purchase of school buses involving the automobile dealership by which he is employed.

  
MEROM BRACHMAN, CHAIRMAN  
OHIO ETHICS COMMISSION