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May 7, 2012

Informal Opinion 2012-INF-0507-2

Lisa A. Dobbins  
Treasurer, Liberty Benton Local School District

Dear Ms. Dobbins:

On March 6, 2012, the Ohio Ethics Commission received your letter requesting an advisory opinion on behalf of the Liberty Benton Local School District (district) Board of Education (board). The district's legal counsel provided additional information about the matter. The facts are:

- The district board of education has established a scholarship fund;
- Each board member gives \$20 of his or her \$60 salary for each board meeting to the fund;
- The funds are deposited directly to the scholarship fund, which is administered by the district treasurer;
- An annual scholarship of \$600 is awarded to a student of the district to assist with tuition for higher education and is paid directly to the college or university; and
- The recipient is selected by a committee of the superintendent, high school principal, guidance counselor, and one board member.

You and the district's counsel provided a copy of the scholarship guidelines and application, and the weighted scoring criteria and sample score sheet used by the district.

### **Question and Brief Answer**

May a board member's relative compete for or receive the scholarship?

**Yes.** However, the board member is prohibited from using his or her position, in any way, to secure the scholarship for his or her family member.

### **Board Member's Relative**

The Ohio Ethics Law applies to public officials and employees in the state, including school board members and most school district employees.<sup>1</sup> The law prohibits public officials and employees from using their public positions to secure benefits for themselves and their family members.<sup>2</sup>

However, the Ethics Law does not prohibit private citizens from seeking benefits from public agencies because their family members are public officials or employees. For that reason, the Ethics Law does not prohibit an immediate family member of a school district board member from applying for or receiving a scholarship from the district.

### **Board Member Soliciting or Securing Scholarship**

Your letter raises the issue of a board member's ability to use his or her public position to secure a benefit for a relative. The most relevant restrictions in the law are R.C. 102.03(D) and (E):

- (D) No public official or employee shall use or authorize the use of the authority or influence of office or employment to secure 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 the public official or employee with respect to that person's 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 the public official or employee with respect to that person's duties.

These restrictions apply to school board members.<sup>3</sup> The term "anything of value" includes money and every other thing of value.<sup>4</sup> A \$600 scholarship is a "thing of value."

R.C. 102.03(D) prohibits a public official from using his or her authority or influence to secure anything of value if the thing of value could impair the official's objectivity and independence of judgment.<sup>5</sup> R.C. 102.03(E) prohibits public official from soliciting a thing of value that could impair the official's objectivity and independence of judgment.<sup>6</sup>

A public official cannot solicit, or use his or her position on a matter before the public agency to secure, a substantial benefit for the official or for a close family member.<sup>7</sup> Such a substantial benefit could bias the official's discretion and judgment if he or she were to participate in the matter.<sup>8</sup>

### **Application to School Board Member**

Therefore, R.C. 102.03(D) prohibits a school board member from taking any action, within the scope of his or her authority or influence, to secure a scholarship for a close family member. This would include the official's children, step-children, or grandchildren.<sup>9</sup> Also, R.C. 102.03(E) prohibits a school board member from soliciting a scholarship for the family member.

If his or her close family member is competing for the district's scholarship, R.C. 102.03(D) and (E) prohibit the board member from taking any actions within the scope of his or her authority on the award. These laws prohibit the board member from, for example:

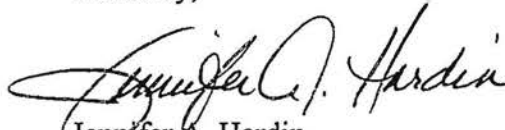
- Voting, discussing, deliberating, or taking any other action if the board considers the matter;
- Formally or informally lobbying other board members, or district employees; and
- Acting as a reference for the applicant.

### **Authority of the Commission**

The Ohio Ethics Commission has the authority to issue advisory opinions in response to questions under the financial disclosure, conflicts of interest, public contracts, and supplemental compensation laws—R.C. 102.03, 102.04, 2921.42, and 2921.43. An Ethics Commission advisory opinion can only determine whether activity is prohibited by these laws, not whether the activity is improper or unethical in a broader sense. This advisory opinion does not consider or interpret other laws or rules, or local policies or guidelines.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on May 7, 2012. If you have any questions or desire additional information, please feel free to contact this Office again.

Sincerely,



Jennifer A. Hardin  
Chief Advisory Attorney

The Ohio Ethics Commission Advisory Opinions referenced in this opinion are available on the Commission's Web site: [www.ethics.ohio.gov](http://www.ethics.ohio.gov).

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<sup>1</sup> R.C. 102.01(B) and (C); Ohio Ethics Commission Advisory Opinion No. 2001-04.

<sup>2</sup> Adv. Op. No. 97-002.

<sup>3</sup> R.C. 2921.01(A)(1); Adv. Op. No. 2001-04.

<sup>4</sup> R.C. 1.03 and R.C. 102.01(G).

<sup>5</sup> Adv. Op. No. 2009-04.

<sup>6</sup> Id.

<sup>7</sup> Adv. Op. No. 97-002.

<sup>8</sup> Id.

<sup>9</sup> Adv. Op. No. 2010-03.