



OHIO ETHICS COMMISSION

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COLUMBUS 43215

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Advisory Opinion No. 78-006

August 4, 1978

Syllabus by the Commission:

1) Division (A)(1) of Section 2921.42 of the Revised Code prohibits a member of a board of education from voting to approve or otherwise knowingly using the authority or influence of his office to secure authorization of a contract for the purchase of school buses in which his employer has an interest, even though the board member himself does not have a prohibited interest in the contract.

2) For purposes of Division (A)(1) and (A)(4) of Section 2921.42 of the Revised Code, the fact that a member of a board of education is employed by a company seeking to contract with the board does not, per se, constitute a prohibited interest in the contract.

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In your request for an Ohio Ethics Commission Advisory Opinion, you asked whether a board of education is prohibited from accepting a sealed bid for school buses from an automobile dealership by which a member of the board is employed.

You state, by way of history, that for the past six and one-half years you have been a member of a local school district board of education. You have been an employee of an automobile dealership for twenty years, and presently serve as a "parts counterman," with neither an ownership interest nor management responsibility in the dealership corporation. You state further that the dealership has submitted sealed bids for buses to the board of education, but that you have no knowledge of the content of the bids.

Section 2921.42 of the Revised Code provides, in pertinent part:

"(A) No public official shall knowingly do any of the following:

(1) Authorize, or employ the authority or influence of his office to secure authorization of any public contract in which he, a member of his family, or any of his business associates has an interest.

....

(4) Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which he is connected."

For purposes of Section 2921.42 of the Revised Code, the term "public official" includes a board of education member, and the term "public contract" comprehends a contract for the purchase of buses by a school district.

Division (A)(1) of Section 2921.42 of the Revised Code would prohibit a member of a board of education from knowingly authorizing or using the authority or influence of his office to secure authorization of a contract for school buses in which he, a member of his family, or any of his business associates has an interest. The application of this provision in the instant case depends on an interpretation of the phrase "any of his business associates." The Commission believes that the phrase contemplates an employer-employee relationship such as that in the instant case. Therefore, the board member is prohibited from voting, authorizing, or using the authority or influence of his office to secure the approval of a public contract in which his employer has an "interest."

In Advisory Opinion No. 78-005, the Ohio Ethics Commission concluded that for purposes of Section 2921.42 (A)(1) of the Revised Code, the term "interest" in a public contract means a definite, direct interest. In the instant case, the board member's employer, his "business associate," has a definite, direct interest in the contract for the sale of buses to the school district. We conclude, therefore, that Division (A)(1) of Section 2921.42 of the Revised Code prohibits a member of a board of education from voting to approve or otherwise knowingly using the authority or influence of his office to secure authorization of a contract for the purchase of school buses in which his employer has an interest. However, the board of education is not prohibited from accepting bids or approving a contract with the board member's employer, if the board member refrains from voting or using his influence to secure approval of the contract, and if the board member himself does not have a prohibited interest in the contract.

Division (A)(4) of Section 2921.42 of the Revised Code would prohibit a member of a board of education from knowingly having an interest in the profits or

benefits of a contract for the purchase of school buses by the board of education with which he serves. However, as discussed above, a prohibited interest in the profits or benefits of the public contract must be a definite, direct interest. In the instant case, the member of the board of education is an employee of the automobile dealership, but neither holds stock nor has management responsibility in the dealership corporation. The fact that a member of a board of education is employed by a firm seeking to contract with the board does not, *per se*, constitute a prohibited "Interest" in a public contract for purposes of Divisions (A)(1) and (A)(4) of Section 2921.42 of the Revised Code. In the instant case., the board member's interest, as an employee, in the profits or benefits of the automobile dealership is not sufficiently direct to constitute an "interest in the profits or benefits of a public contract" for purposes of Division (A)(4) of Section 2921.42 of the Revised Code. We conclude that for purposes of Division (A)(4) of Section 2921.42 of the Revised Code, a member of a board of education who is employed by an automobile dealer does not, by virtue of his employment alone, have an "interest" in the profits or benefits of a contract between the school district and his employer for the purchase of school buses.

Your attention is directed to Section 3313.33 of the Revised Code., which provides, in pertinent part:

"No member of the board (of education) shall have, directly or indirectly, any pecuniary interest in any contract of the board or be employed in any manner for compensation by the board of which he is a member except as a clerk. . ."

Although the Ohio Ethics Commission does not render advisory opinions with respect to this Section, it should be noted that Ohio's Seventh District Court of Appeals read this provision *in pari materia* with Section 2921.42 of the Revised Code in an unreported case, Boardman Local School District, v. Ferguson, Case No. 74 C.A. 32 (1974). In that case, a member of the board of education was an employee of IBM, which contracted with the school district for various machines, supplies, and services. The court held that Sections 3313.33 and 2921.42 of the Revised Code are "related to the same subject matter, have the same purpose and are to the extent that they apply to the same facts." The court refused the defendant's proposition that an employee of a large corporation, regardless of his position with the company, has an interest in any contract between the company by which he is employed and the board of education on which he serves. The court stated that "unless the salary of such an employee is based, directly or indirectly, on such contract we do not feel that such an employee has the 'pecuniary interest'

specified in R. C. 3313.33. To hold otherwise would effectively bar substantial numbers of employees of large corporations from seeking election to boards of education."

The conclusions of this advisory opinion are based on an examination of the facts and circumstances of the instant case as you have presented them. 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 address possible violations of other laws or rules.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that: 1) Division (A)(1) of Section 2921.42 of the Revised Code prohibits a member of a board of education from voting to approve or otherwise knowingly using the authority or influence of his office to secure authorization of a contract for the purchase of school buses in which his employer has an interest, even though the board member himself does not have a prohibited interest in the contract; and 2) for purposes of Division (A)(1) and (A)(4) of Section 2921.42 of the Revised Code, the fact that a member of a board of education is employed by a company seeking to contract with the board does not, per se, constitute a prohibited interest in the contract.

  
F. Herbert Hoffman, Jr. - Chairman  
The Ohio Ethics Commission

