

Ann Marie Tracey, *Chair*
Ben Rose, *Vice Chair*
Merom Brachman
Betty Davis
Steven Dettelbach
Shirley Mays

David E. Freel,
Executive Director



OHIO ETHICS COMMISSION
8 East Long Street, 10th Floor
Columbus, Ohio 43215
Telephone: (614) 466-7090
Fax: (614) 466-8368

www.ethics.ohio.gov

INFORMATION SHEET: ADVISORY OPINION NO. 2008-03
STEP-CHILDREN AS FAMILY MEMBERS

What is the question addressed in the opinion?

Can a public official or employee hire his or her step-child?

What is the answer in the opinion?

No. The Ethics Law prohibits a public official or employee from authorizing an employment contract for a member of his or her family. A public official's step-child is a member of his or her family, regardless of the step-child's age. The Commission also concluded that a public official's step-parent is a member of his or her family.

A public official or employee is prohibited from hiring his or her step-child. The official or employee is also prohibited from using his or her public position to get a job for a step-child. For example, a public official or employee cannot recommend his or her step-child or formally or informally lobby other officials or employees about a job for his or her step-child.

To whom does this opinion apply?

The conclusions in this opinion apply to all individuals who are elected or appointed to, or employed by, any public agency, including but not limited to any state agency, county, city, township, school district, public library, and regional authority, regardless of whether the person is: (1) compensated or uncompensated; (2) serving full time or part time; or (3) serving in a temporary or permanent position.

How and when did the opinion become effective?

The opinion became effective upon acceptance by the Commission.

For More Information, Please Contact:

David E. Freel, Executive Director, **or**
Jennifer A. Hardin, Chief Advisory Attorney
(614) 466-7090

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IT IS NOT AN ETHICS COMMISSION ADVISORY OPINION.
ADVISORY OPINION NO. 2008-03 IS ATTACHED.**

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David E. Freel,
Executive Director

Advisory Opinion
Number 2008-03
November 12, 2008

Syllabus by the Commission:

- (1) Division (A)(1) of Section 2921.42 of the Ohio Revised Code prohibits a public official from authorizing, or using his or her position to secure authorization of, a contract for or the employment of a “member of the public official’s family;”
- (2) Because a step-child is a “member of [a] public official’s family,” regardless of whether the step-child lives in the same household with the official, R.C. 2921.42(A)(1) prohibits a public official from authorizing or using his or her position to secure authorization of any contract, including employment, for his or her step-child;
- (3) Divisions (D) and (E) of Section 102.03 of the Ohio Revised Code prohibit a public official from soliciting, or using his or her position to secure, a definite and direct financial benefit or detriment for his or her step-child.

* * * * *

The Ethics Law prohibits a public official from authorizing the employment of his or her family member and from using his or her position to secure authorization of the family member’s employment. The question before the Ohio Ethics Commission is whether a public official’s step-child is his or her family member for purposes of this restriction.

Authorizing Employment—R.C. 2921.42(A)(1)

Division (A)(1) of Section 2921.42 of the Ohio Revised Code provides that no public official shall knowingly:

Authorize, or employ the authority or influence of the public official’s office to secure authorization of *any* public contract in which the public official, *a member of the public official’s family*, or any of the public official’s business associates has an interest.

(Emphasis added.)

This restriction applies to all individuals who are elected or appointed to, or employed by, any public agency, including but not limited to any state agency, county, city, township, school district, public library, and regional authority. R.C. 2921.01(A). The restriction applies regardless of whether the person is: (1) compensated or uncompensated; (2) serving full time or part time; or (3) serving in a temporary or permanent position.

Terms used in R.C. 2921.42(A)(1)

A “**public contract**” is defined as:

The purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of the state, any of its political subdivisions, or any agency or instrumentality of either, including the employment of an individual by the state, any of its political subdivisions, or any agency or instrumentality of either.

R.C. 2921.42(I)(1)(a). The phrase “including the employment of an individual by the state, any of its political subdivisions, or any agency or instrumentality of either” was added in an amendment enacted in 1994. Since 1985, before the General Assembly amended the definition to specifically include employment, the Commission had consistently held that the “purchase or acquisition . . . of services” included employment. Ohio Ethics Commission Advisory Opinions No. 90-010, 92-012, and 97-004. See also *Walsh v. Bollas* (1992), 82 Ohio App. 3d 588. While this opinion focuses on employment, R.C. 2921.42(A)(1) applies to a public official with respect to *any* contract in which a member of his or her family has an interest.

A prohibited “**interest**” in a public contract is a definite and direct interest that can be of either a financial or fiduciary nature. Adv. Ops. No. 81-008 and 88-001. A person who is employed by a public agency has a definite and direct financial interest in his or her individual employment contract. Adv. Op. No. 82-003.

“**Authorizing**” a contract includes voting on, signing, or taking any other action to award the contract. Adv. Op. No. 2001-02. Employing the “**authority or influence**” of one’s position to “**secure authorization of**” a contract includes a much broader range of activities, such as recommending, deliberating or discussing, and formally or informally lobbying any public official or employee about the contract. Id.

Nepotism Restriction

Beginning in 1980, the Commission has issued numerous opinions holding that R.C. 2921.42(A)(1) prohibits a public official from voting, discussing, deliberating, recommending, lobbying other officials and employees, or taking any other action to authorize, or secure the authorization of, any public contract, including a public job, for a family member. See, e.g.,

Adv. Ops. No. 92-012, 97-004, and 98-004. The purpose of R.C. 2921.42(A)(1) is to ensure that the public and public resources are protected, when an official is exercising his or her discretionary, decision-making authority regarding employment and other contracts, by prohibiting the official from showing favoritism to family members or business associates. Adv. Op. No. 90-010.

The Supreme Court of Ohio Board of Commissioners on Grievances and Discipline, which applies R.C. 2921.42(A)(1) to facts involving judges and judicial employees, has concluded that it is improper for a judge to appoint his or her adult son or daughter to serve as acting judge during his or her vacation. See also Ohio Sup.Ct., Bd Comm'rs on Grievances and Discipline, CPR Op. 04-10 (2004). Further, Ohio courts have concluded that R.C. 2921.42(A)(1) prohibits a public official from hiring a family member. See *Walsh v. Bollas* (1992), 82 Ohio App. 3d 588, 591 (upholding the trial court's conclusion that R.C. 2921.42(A)(1) prohibited a county sheriff from hiring his son-in-law who resides in his household) and *In re Removal of Steed* (July 27, 1989), Lawrence App. No 1909 (school board member could be removed from office for a violation of R.C. 2921.42(A)(1) because he had voted to approve the employment of his wife).

The Ethics Commission has held that R.C. 2921.42(A)(1) is not a "no-relatives" policy. Adv. Op. No. 90-010. A public official's family member is not prohibited from being employed by the same agency the official serves *provided that* the official is not required to and does not: (a) authorize the employment; or (b) use the authority or influence of his or her public position in any way, such as recommending, discussing, and lobbying other officials and subordinate employees, to secure authorization of the employment. Adv. Op. No. 90-010 (Because a city safety director was *required*, by the city's charter, to authorize the hire of *all* safety force employees, his son was unable to work for the city as a firefighter without the safety director violating R.C. 2921.42(A)(1)). However, even if a public official's family member has been lawfully hired by the agency, the Commission held that R.C. 2921.42(A)(1) prohibits the official from taking any action to secure definite and direct contract-related benefits, such as promotions, individual or differential raises, and increased benefits or hours, for his or her family member. Adv. Op. No. 92-012.

Member of the Public Official's Family

In 1980, the Commission defined "a member of [the public official's] family." The Commission concluded:

[F]or purposes of Section 2921.42 of the Revised Code, the term "a member of his family" includes, but is not limited to: 1) grandparents; 2) parents; 3) spouse; 4) children,¹ whether dependent or not; 5) grandchildren; 6) brothers and sisters; or 7) any person related by blood or marriage and residing in the same household.

¹ "Children" includes, without distinction, biological and adopted children.

Adv. Op. No. 80-001. See also *Jones v. Brookfield Twp. Trustees* (June 30, 1995), 11th Dist. App. No. 92-T-4692, 19-22 (citing this definition favorably while concluding that R.C. 2921.42(A)(1) did not prohibit a township trustee from voting on the employment of his uncle who did not reside with him) and *Baynard v. Oakwood Village* (Oct. 16, 1997), 8th Dist. App. No. 71711, 15-18 (citing this definition favorably while concluding: “The law of Ohio does not prohibit public officials from hiring a brother-in-law unless such relative resides with the public official in question”). Under this definition, a public official’s step-child who is living in the same household as the public official would be a “member of the public official’s family.”

However, as emphasized in Advisory Opinion No. 80-001, the definition of a family member is not limited to the specific relatives identified in the opinion. The Commission recognized that the use of the phrase “a member of [the public official’s] family” in R.C. 2921.42, as opposed to the narrower phrase “immediate family member” that is used in other provisions of the Ethics Law, suggests that the phrase be interpreted more broadly. Adv. Op. No. 80-001. The Commission, citing *Black’s Law Dictionary*, also recognized that the term “family” is an indefinite, flexible term that may be construed differently as the circumstances require. Adv. Op. No. 80-001. Similarly, *Black’s Law Dictionary* (6th Ed. 1991), 418 states “[t]he meaning of [family] necessarily depends on the field of law in which word is used, purpose intended to be accomplished by its use, and facts and circumstances of each case.”

When interpreting several Ohio statutes that are concerned with familial matters, Ohio courts have recognized step-children as family members. For example, the Ohio Supreme Court has decided that R.C. 2907.03(A)(5), prohibiting sexual contact between certain family members, specifically applies to a step-parent and a step-child even after the step-child is an adult. *State v. Lowe* (2007), 112 Ohio St.3d 507, 2007-Ohio-606, at ¶ 15. The Court stated “[s]tepchildren and adopted children have been included as possible victims . . . because society is concerned with the integrity of the family, including step and adoptive relationships as well as blood relationships.” *Lowe* at ¶ 25. In *State v. Noggle*, interpreting an earlier version of the same statute, the Supreme Court stated: “The traditional family unit has become less and less traditional, and the legislature wisely recognized that the parental role can be assumed by persons other than biological parents.” *State v. Noggle* (1993), 67 Ohio St.3d 31, 33.

Interpreting “relatives” as used in R.C. 3109.11, a statute regarding visitation rights for the relatives of a deceased parent of a minor child, the Ninth District Court of Appeals concluded that a surviving spouse continues to be a relative of the deceased spouse. *Goeller v. Lorence*, Lorain App. No. 06CA008883, 2006-Ohio-5807, ¶ 13. The court further concluded that a step-parent and step-child have a close bond that is not severed even by the death of the biological parent or the subsequent remarriage of the step-parent. *Goeller* at ¶ 14.

Other statutory references to family and children either specifically include step-relatives or have been interpreted as including them. For example, for purposes of the Ohio Victim’s Rights Statute, R.C. 2930.01(D) includes step-children as individuals who can be considered

“member[s] of the victim’s family.” R.C. 2907.08, which prohibits voyeurism, includes step-children along with biological and adoptive children among the class of possible victims. Article II, Section 34a of the Ohio Constitution, which recognizes the general assembly’s authority to establish a minimum wage, states that employees of a solely family-owned and operated business who are family members of an owner are not included within the wage rate requirements. R.C. 4111.14, the statute implementing the constitutional minimum wage, defines “family member,” for purposes of this exception, to specifically include step-children. R.C. 4111.14(D)(2).

R.C. 4503.546 states that, if any person dies in a combat zone while a member of the U.S. armed forces, a member of his or her immediate family may apply to the registrar of motor vehicles for a “gold star family” license plate. As used in that section, “member of the immediate family” includes a step-parent and step-child. R.C. 4503.546(D)(2) and (4). For purposes of R.C. 147.43(A)(7)(f), an exception to the public records law that protects “familial information” of peace officers, the Attorney General concluded that a step-child is considered a “child” of the peace officer. *2000 Ohio Atty.Gen.Ops. No. 2000-02*.

In an interpretation of R.C. 102.02(A)(7), the provision of the Ethics Law that requires public officials to disclose sources of gifts, the Joint Legislative Ethics Committee concluded that a member or employee of the General Assembly who files a financial disclosure statement is *not* required to disclose a step-relation as a source of a gift. *Joint Legislative Ethics Committee Advisory Opinion No. 95-008*. R.C. 102.02(A)(7) specifically provides that a public official need not disclose gifts from listed family members. The list does not include step-relations, but the Committee found that the exclusion was an oversight by the General Assembly rather than an intentional omission. See also 5 U.S.C. §3110 (step-relations are specifically included in the Federal Ethics Laws’ definition of “relatives” for purposes of federal nepotism restrictions).

Since the Commission first considered the question of family members in 1980, a more recent edition of *Black’s Law Dictionary* has defined “family” as “[a] group of persons connected by blood, by affinity, or by law, esp. within two or three generations.” (Emphasis added.) *Black’s Law Dictionary* (8th Ed. 1999), 637. “Affinity” is “[t]he relation that one spouse has to the blood relatives of the other spouse; relationship by marriage.” *Id.* at 63. This definition of “family” specifically *includes* step-relations.

As noted above, the purpose of R.C. 2921.42(A)(1) is to prevent the possibility of favoritism by a public official. Adv. Op. No. 90-010. The familial relationship between a step-parent and step-child is such that it could affect an official’s impartiality in consideration of any contract in which the step-child has an interest. Therefore, a public official’s step-child, regardless of his or her age and where he or she resides, is a “member of a public official’s family.”

R.C. 2921.42(A)(1) prohibits a public official from authorizing any public contract if his or her step-child has an interest in the contract. The restriction applies to the public official just as it would if the official's biological or adopted child had an interest in the contract. Therefore, R.C. 2921.42(A)(1) prohibits a public official from employing, or using his or her position to secure the employment of, a step-child.

R.C. 2921.42(A)(1) does not prohibit the official from voting on a union contract covering his or her step-child unless the step-child serves as a union officer, board member, or on the union negotiating team or the contract affects the step-child's interests in a differential manner than other union members. Adv. Op. No. 98-003. Similarly, while R.C. 2921.42(A)(1) prohibits the official from voting on, authorizing, or taking any action to secure an *individual or differential* raise for his or her step-child, the law does not prohibit the official from acting on an across-the-board raise for all employees of the agency, including his or her step-child, provided that the step-child is affected in the same manner as all other members of the class. *Id.*

Conflict of Interest Provision—R.C. 102.03(D) and (E)

In addition to the public contract restrictions, R.C. 102.03(D) and (E) also apply to a public official or employee when a family member is seeking employment with, or is employed by, the same public agency he or she serves. R.C. 102.03(D) and (E) provide that:

- (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.

R.C. 102.03(D) and (E) apply to any person who is elected or appointed to, or employed by, any public agency, except teachers, instructors, and other educators who do not perform or have the authority to perform supervisory or administrative functions. R.C. 102.01(B) and (C).

Terms used in R.C. 102.03(D) and (E)

“**Anything of value**” includes money and every other thing of value. R.C. 103; 102.03(G). Employment and the compensation and benefits that accompany it are within the definition of anything of value. Adv. Op. No. 92-012.

A thing of value manifests a “**substantial and improper influence**” on a public official or employee if it could impair the official’s or employee’s objectivity and independence of judgment with respect to his or her public duties. Adv. Ops. No. 91-010 and 95-001.

The Commission has stated that voting on, recommending, deliberating about, discussing, lobbying, or taking any other formal or informal action within the scope of a public official’s or employee’s public authority is “**use of,**” or “**authorization of the use of**” the **authority or influence** of a public official’s or employee’s office or employment. Adv. Op. No. 88-005.

Participating in Matters Involving a Step-child

The Commission has held that a public official’s or employee’s objectivity and independence of judgment will be impaired if a member of his or her family receives anything of value as a result of decisions before his or her public agency. Adv. Op. No. 89-009. A definite and direct benefit to his or her relative is of such a character as to have a substantial and improper influence on a public official or employee even if the official or employee will not personally receive anything of value. Adv. Op. No. 92-012.

The Commission has applied this restriction in opinions involving an official’s or employee’s spouse, children (whether dependent or not), and siblings, but the law could also apply when matters affect other close family members. Adv. Ops. No. 79-008 (spouse), 88-005 (children), and 98-002 (siblings). The relationship between a step-parent and step-child is similar to these relationships. If his or her step-child were to receive a definite and direct benefit from a matter that is before a public official or employee, the thing of value would have a substantial and improper influence on the official or employee and will impair his or her objectivity and independence of judgment on the matter.

Therefore, R.C. 102.03(D) and (E) prohibit a public official or employee from participating, in any way, in a matter which would render a definite and direct financial benefit or detriment for his or her step-child. For example, a public official or employee is prohibited from participating in any matter or decision that could affect the continuation, implementation, or terms and conditions of a step-child’s individual employment including: changes in compensation or benefits that are determined by individual working conditions, the assignment of duties that will change the terms of the employment, evaluations, and actions involving promotions, discipline, lay-offs, and termination. Adv. Op. No. 97-004.

Furthermore, R.C. 102.03(D) and (E) prohibit a public official or employee from using the authority or influence his or her position, formally or informally, to influence the decisions or actions of *other* officials or employees in matters that would affect the step-child’s interest in his or her individual employment relationship. A public official or employee is prohibited, for example, from using his or her influence over subordinate employees to secure any benefit for his or her step-child.

Step-Children and Step-Parents

This opinion considers whether a public official's step-children are members of his or her family. However, the Commission notes that a step-parent has the same kind of relationship to his or her step-children as step-children have to their step-parents. Therefore, a public official's step-parent is also a member of his or her family. All of the restrictions discussed above also apply to a public official regarding his or her step-parents. R.C. 2921.42(A)(1) prohibits a public official from authorizing, or using his or her position to secure authorization of, a public contract, including an employment contract, for his or her step-parent. Also, R.C. 102.03(D) and (E) prohibit a public official from soliciting, or using his or her position to secure, a definite and direct financial benefit for his or her step-parent.

Conclusion

Therefore, it is the opinion of the Ohio Ethics Commission, and you are advised as follows: First, Division (A)(1) of Section 2921.42 of the Ohio Revised Code prohibits a public official from authorizing, or using his or her position to secure authorization of, a contract for or the employment of a "member of the public official's family." Second, because a step-child is a "member of [a] public official's family," regardless of whether the step-child lives in the same household with the official, R.C. 2921.42(A)(1) prohibits a public official from authorizing or using his or her position to secure authorization of any contract, including employment, for his or her step-child. Finally, Divisions (D) and (E) of Section 102.03 of the Ohio Revised Code prohibit a public official from soliciting, or using his or her position to secure, a definite and direct financial benefit or detriment for his or her step-child.



Ann Marie Tracey, Chair
Ohio Ethics Commission