

OHIO ETHICS COMMISSION

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March 16, 2000 Informal Opinion 2000-INF-0316-1

Mr. James V. Frazier III, Superintendent
Fayetteville-Perry Local Schools



Dear Mr. Frazier:

In a letter to the Ethics Commission, you ask whether the Ethics Law and related statutes prohibit a public official from voting, discussing, or otherwise participating in the issuance of a public employment contract, a salary determination, or any other benefit to another official where one official is a member of ABC local school board and treasurer of XYZ library board and the other official is a member of XYZ library board and administrator of ABC local school district.

As explained more fully below, R.C. 102.03(D) prohibits a public board member from voting, discussing, deliberating, formally or informally lobbying, or taking any other official action in any matter concerning the employment contract of an employee of that board where the employee is also a member of the public board by which the board member is employed. In addition, under these circumstances, each board member must abstain from participating on matters where the other board member may receive something of value. These matters include, but are not limited to, any of the following: changes in compensation or benefits that are determined by individual working conditions, the assignment of duties that will change the terms of the contract, evaluations, and actions involving promotions, discipline, lay-offs, and termination.

The Ethics Law does not, however, prohibit either board member from participating in matters in which an employee of that board, who is also a member of the public board that employs the board member, may receive an incidental benefit, such as the provision of facilities and equipment, to be used in carrying out the duties of their respective public positions. Further, the Ethics Law does not prohibit either board member from participating in matters in which a group or class of employees, including the employee that holds a position of authority over the board member in another public entity, receives a uniform benefit.

Facts

You state that public official "A" is a board member of ABC local school board and is also employed as a treasurer by the XYZ county free public library board. You also state that public official "B" is a member of the XYZ county free public library board and is employed as an administrator by the ABC school board. Further, you state that the ABC school board and XYZ library board are not linked contractually or organizationally, and neither official is part of a bargaining unit. Official "A" has the authority to vote on the public employment contract, salary and benefits of official "B" as it relates to official "B's" employment by the ABC school board as an administrator. Official "B" has the authority to vote on the public employment contract, salary and benefits of official "A" as it relates to official "A's" employment by the XYZ library board as treasurer.

Based on the circumstances identified above, you ask whether the Ethics Law and related statutes prohibit each board member from voting, discussing, or otherwise participating in the issuance of a public employment contract, a salary determination, or the provision of any other benefit to the other board member. In order to answer the question that you have presented to the Commission, it is first necessary to examine the powers and duties of a member of a local school board and a member of a county free public library board.

Powers and Duties of a Local School Board Member—R.C. 3319.02

The powers and duties of a local school board member as they relate to the employment of a local school district administrator are contained in R.C. 3319.02. In local school districts, administrators are employed or reemployed in accordance with the nomination of the superintendent of the local district's service center, with the exception that a local school board may, by majority vote, reemploy any administrator whom such superintendent refuses to nominate after considering two nominees for the position. R.C. 3319.02(C). The local school board then has the authority to execute a written contract of employment with each administrator it employs or reemploys. Id. The term of the contract is not to exceed three years except that in the case of a person who has been employed as an administrator in the district for three years or more, the term of the contract is not to be for more than five years and, unless the superintendent of the district recommends otherwise, not less than two years. Id. The contract must specify the employee's administrative position and duties, the salary and other compensation to be paid for performance of the duties, the number of days to be worked, and the number of days of vacation leave. Id. The salaries and compensation prescribed by such contracts may not be reduced by a local school board unless such reduction is part of a uniform plan affecting the entire district or center. Id.

A local school board has authority in deciding whether or not to renew an administrator's contact. A local school board may reemploy an administrator at any regular or special meeting held during the period beginning on the first day of January of the calendar year immediately preceding the year of expiration of the employment contract and ending on the last day of March of the year the employment contract expires. R.C. 3319.02(C). At the end of the administrator's contract term, the administrator is deemed reemployed at the same salary plus any increments

that may be authorized by the board unless the administrator notifies the board in writing to the contrary on or before the first day of June, or unless the board, on or before the last day of March of the year in which the contract of employment expires, either reemploys the administrator for a succeeding term or gives written notice of its intention not to reemploy the administrator.

The local school board evaluates the administrator and bases its employment decision on the evaluation. R.C. 3319.02(D). An administrator's contract may not be terminated or suspended by the board except pursuant to section 3319.16 or 3319.17 of the Revised Code. R.C. 3319.02(C). R.C. 3319.16 provides that the contract may not be terminated except for gross inefficiency or immorality; for willful and persistent violations of reasonable regulations of the board of education; or for other good and just cause.

Powers and Duties of a County Free Public Library Board Member—R.C. 3375.40

Just as a member of a local school district board performs duties and exercises powers that affect an administrator of that local school district, a member of a county free public library board performs duties and exercises powers that affect a treasurer of that county free public library.

A county free public library is established pursuant to R.C. 3375.06, which provides for the appointment of the board of library trustees. R.C. 3375.06 further provides that the board of trustees of a county free public library shall control and manage the library, and is governed by R.C. 3375.33 to 3375.41. R.C. 3375.33 provides that a board of trustees of a county free public library, appointed pursuant to R.C. 3375.06, is a body politic and corporate, capable of suing and being sued, contracting, acquiring, holding, possessing, and disposing of property, and of exercising such other powers and privileges as are conferred upon it by law.

R.C. 3375.40 grants a county free public library board broad authority to "generally do all things it considers necessary for the establishment, maintenance, and improvement of the county library under its jurisdiction." More specifically, county free public library boards have the authority to appoint and fix the compensation of all of the employees of the county library under its jurisdiction. R.C. 3375.40(G). Further, county free public library boards have the authority to purchase, lease, improve, equip, and furnish buildings. R.C. 3375.40(C). Finally, a county free public library board makes and publishes rules for the proper operation and management of the county free public library and facilities under its jurisdiction. R.C. 3375.40(H).

Using or Authorizing the Use of the Authority or Influence of Office—R.C. 102.03(D)

Based on the statutory powers and duties of each board, as described above, R.C. 102.03(D) is applicable to the board members in the situation that you have set forth in your correspondence to the Commission. R.C. 102.03(D) provides the following:

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.

The term "public official or employee," as used in R.C. 102.03(D), includes any person who is elected or appointed to an office or is an employee of any public agency. See R.C. 102.01(B). A "public agency" includes any board or commission of a county or any other governmental entity. R.C. 102.02(C). A member of a board of education is a person appointed to an office of a governmental entity. Therefore, a school board member is a "public official" subject to the prohibitions of R.C. 102.03(D). See Ohio Ethics Commission Advisory Opinions No. 90-003 and 93-014.

The question becomes whether a member of a county free public library board is a "public official or employee" subject to the prohibition of R.C. 102.03(D). In Advisory Opinion No. 97-003, the Ethics Commission determined that a county district library is a "governmental entity" for purposes of R.C. 102.01(C). A county district library and a county free public library have the same powers and authority under R.C. 3375.33 to 3375.41. Therefore, a county free public library is a "governmental entity" for purposes of R.C. 102.01(C).

A member of a county free public library board is appointed to the board by the court of common pleas of the county in which the library is situated. R.C. 3375.06. As an appointee to an office of a governmental entity, a member of a county free public library board is a "public official or employee" and subject to the prohibition of R.C. 102.03(D). See R.C. 102.01(B) and (C).

The term "anything of value" is defined for purposes of R.C. 102.03 to include money, a promise of future employment, and every other thing of value. See R.C. 102.01(G) and R.C. 1.03. An employee's continued employment, and the compensation and other benefits received therefor, fall within the definition of "anything of value." See Adv. Ops. No. 90-004 and 92-012.

The Commission has held that R.C. 102.03(D) prohibits a public official from using her authority or influence to secure, formally or informally, anything of value for herself or any other party, if the relationship between the employee and the other party is such that the employee's objectivity and independence of judgment could be impaired. See Adv. Ops. No. 88-004, 89-005, and 97-002. The Commission has stated that a public official is prohibited from acting, in his or her official capacity, in matters that would provide a personal pecuniary benefit to another party if that party exercises authority over that public official in a separate setting. See Adv. Op. No. 89-008 (A city council member is prohibited, by virtue of R.C. 102.03(D), from voting, deliberating, participating in discussions, or otherwise using his official position, either formally or informally, with regard to an application for a property tax abatement submitted by the company with which he is employed, since the employer holds a position of power and authority over the hiring, compensation, discipline, and termination of its employees.).

Based on the powers and duties of a county free public library board member and a local school district board member, as outlined above, it is clear that each board member has authority over employees of the board he serves. Each board member has the authority to act in matters involving the employment contracts of employees of that board.

Based on the relationship between the two board members in the two separate political subdivisions, R.C. 102.03(D) prohibits each board member from using his or her authority or influence, formally or informally, to act with respect to the other board member's individual contract of employment. See Adv. Ops. No. 92-012 and 97-004. Each board member is also prohibited from acting on any matters related to the other board member's employment. These matters include, but are not limited to, any of the following: changes in compensation or benefits that are determined by individual working conditions, the assignment of duties that will change the terms of the contract, evaluations, and actions involving promotions, discipline, lay-offs, and termination. Id. Furthermore, R.C. 102.03(D) prohibits each board member from using the authority or influence of her office, formally or informally, to influence the decisions or actions of other officials or employees of their respective boards in matters that would affect the other board member's individual employment relationship with the school district or the county library.

Provision of a Uniform Benefit

In the course of the performance of his or her official duties on the board, each board member may have the opportunity to participate in matters that would provide a benefit to a group or class of individuals that includes the other board member. If this situation were to arise, R.C. 102.03(D) would not prohibit the board member from participating in matters that would provide a benefit to the other board member that is identical to, and in common with, the benefit received by an entire class of employees of the school district or county free public library. See Adv. Op. No. 92-012. For instance, R.C. 102.03(D) would not prohibit the board member from participating in matters involving an across-the-board salary increase that would provide a uniform benefit to a significant class or group of employees, including the other board member. Id. If, however, the other board member would be differentially affected by a matter pending before the board, R.C. 102.03(D) would prohibit the board member from participating in that matter. Id.

Provision of Facilities, Equipment, and Supplies

As stated above, the county free public library board member is responsible for providing facilities, equipment, and other supplies for the use of the employees of the county free public library. The next question is whether facilities, equipment, and other supplies for the county free public library would be a substantial thing of value for an employee of that library (who also holds a position of authority over the county free public library board member in a separate political subdivision) such that it would have an improper influence upon the county free public library board member with respect to the performance of his official duties.

In Advisory Opinion No. 90-004, the Commission addressed a similar situation when a city council member whose spouse was a municipal court judge asked whether he was prohibited from participating in council's decision to provide accommodations, books, employees, supplies, and services for the municipal court and its officers. In that opinion, the Commission stated the following:

In Advisory Opinion No. 89-002, the Ethics Commission held that the receipt of a thing of value by and for the use of a public agency is not of such character as to manifest an improper influence on the officials and employees of that agency so long as no official or employee of the agency benefits personally. By extension, the receipt of accommodations, personnel, and supplies by the public agency with which the spouse of a city council member serves is not of such character as to manifest an improper influence upon the city council member.

Therefore, R.C. 102.03(D) does not prohibit the county free public library board member from participating in the county free public library board's consideration of the provision of facilities, equipment, or supplies to the county library.

Likewise, R.C. 102.03(D) does not prohibit the local school board member from participating, as a member of the school board, on any matter involving the appropriation of resources to the office of the school district administrator. R.C. 102.03(D) does prohibit both the county free public library board member and the local school district board member from using their respective positions, through the processes of providing accommodations and appropriating resources, for the personal benefit of each other. See Adv. Op. No. 89-008.

Securing Authorization of a Public Contract for a Business Associate—R.C. 2921.42(A)(1)

You should also be aware that R.C. 2921.42(A)(1) prohibits a public official from using the authority or influence of office to secure authorization of a public contract for individuals with whom the public official has certain relationships. In particular, R.C. 2921.42(A)(1) provides that no public official shall knowingly:

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.

In the situation that you have presented to the Commission, you have not indicated that the member of the local school board, who is also a treasurer of a county library, and the administrator of that local school district, who is also a member of that county library board, are members of the same family. Therefore, the question becomes whether these individuals are business associates.

The Commission has stated that a private corporation is the "business associate" of its employees, because the employees are engaged in a business enterprise with their employers. Adv. Ops. No. 78-006 and 92-008. In Advisory Opinion No. 93-003, the Commission stated that

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two public board members are not "business associates" for purposes of R.C. 2921.42(A)(1), because a public agency is not engaged in a "business" enterprise. Based on the reasoning of that advisory opinion, a public board member and an employee of the public agency are not "business associates" for purposes of R.C. 2921.42(A)(1). Therefore, the prohibition of R.C. 2921.42(A)(1) does not apply to the facts that you have presented to the Commission.

Conclusion

As explained more fully above, R.C. 102.03(D) prohibits a public board member from voting, discussing, deliberating, formally or informally lobbying, or taking any other official action in any matter concerning the employment contract of an employee of that board where the employee is also a member of the public board by which the board member is employed. In addition, under these circumstances, each board member must abstain from participating on matters where the other board member may receive something of value. These matters include, but are not limited to, any of the following: changes in compensation or benefits that are determined by individual working conditions, the assignment of duties that will change the terms of the contract, evaluations, and actions involving promotions, discipline, lay-offs, and termination.

The Ethics Law does not, however, prohibit either board member from participating in matters in which an employee of that board, who is also a member of the public board that employs the board member, may receive an incidental benefit, such as the provision of facilities and equipment, to be used in carrying out the duties of their respective public positions. Further, the Ethics Law does not prohibit either board member from participating in matters in which a group or class of employees, including the employee that holds a position of authority over the board member in another public entity, receives a uniform benefit.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on March 16, 2000. The opinion is based on the facts presented and is limited to questions arising under Chapter 102. and Sections 2921.42, 2921.421, and 2921.43 of the Revised Code and does not purport to interpret other laws or rules. If you have any questions or desire additional information, please contact this Office again.

Sincerely,



Timothy L. Gates
Staff Attorney