

# OHIO ETHICS COMMISSION

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David E. Freel, *Executive Director*

August 13, 2004

Informal Opinion 2004-INF-0813

Michael H. Smith, Superintendent  
Georgetown Exempted Village School District

Dear Mr. Smith:

In a letter received by the Ohio Ethics Commission on May 20, 2004, you have asked under what circumstances the Ohio Ethics Law and related statutes prohibit you, as Superintendent of the Georgetown Exempted Village School District (District), from recommending your spouse for a one-year contract, or other employment position, with the District.

### Brief Answer

As explained below, R.C. 2921.42(A)(1) prohibits you from authorizing, or using your position to secure authorization, of your spouse's contract for employment with the District. Because the superintendent of a school district is required by law to make recommendations regarding the employment of teachers, you are unable to withdraw from that process when your spouse is being considered for employment with the District. Therefore, the prohibition imposed upon you by R.C. 2919.42(A)(1) prevents your spouse from being rehired by the District after she retires from her teaching position.

### Facts

You state that your spouse has 32 years of teaching experience and has been employed by the District for five years. You state that you were not employed as the District's Superintendent when she was hired. You have explained that your spouse wishes to retire from her teaching position with the District, and come back to the same position on a one-year contract.

**Employment of Family Members—R. C. 2921.42(A)(1)**

R.C. 2921.42(A)(1) provides that no public official shall:

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.

A school district superintendent falls within the definition of “public official” for purposes of R.C. 2921.42(A)(1). See Ohio Ethics Commission Advisory Opinion No. 2001-05.

The term “public contract” is defined to include “[t]he employment of an individual by the state, any of its political subdivisions, or any agency or instrumentality of either.” R.C. 2921.42(G)(1)(a) (emphasis added). The hire of a teacher by a school district is a public contract for purposes of R.C. 2921.42(A)(1). Adv. Op. No. 92-017. In the instant situation, the rehiring of your spouse by the District for a one-year contract after she retires from her teaching position is a public contract for purposes of R.C. 2921.42(A)(1).

R.C. 2921.42(A)(1) prohibits a school district superintendent from “authorizing, or employing the authority or influence” of his public position to secure the employment of “a member of his family.” For purposes of R.C. 2921.42(A)(1), the Ethics Commission has defined the term “member of his family” as including, but not limited to, the public official’s spouse, children (whether dependent or not), parents, grandparents, grandchildren, and siblings. Adv. Ops. No. 80-001 and 90-010. The Commission has also included in this definition any other persons related to the official by blood or by marriage and who reside in the same household as the official. Id. A spouse of a public official is a member of a public official’s family for purposes of R.C. 2921.42(A)(1). Adv. Op. 82-003 and 85-015.

R.C. 2921.42(A)(1) does not prohibit a family member of a public official from being employed by the same political subdivision that the official serves; rather it prohibits the public official from taking any action to secure employment for his family member. The purpose of R.C. 2921.42(A)(1) is to prevent the possibility that a public official may show favoritism in the exercise of his discretionary, decision-making authority in authorizing a contract for public employment.

**Authorizing a Public Contract**

A public official will be deemed to have “authorized” a public contract, for purposes of R.C. 2921.42(A)(1), where the contract could not have been awarded without the approval of the official, the public position in which he serves, or the board of which he is a member. Adv. Ops. No. 87-004 and 97-004. A public official is prohibited, by R.C. 2921.42(A)(1), from hiring his spouse directly, and also from participating in any part of a decision-making process authorizing or approving employment for a spouse even if those decisions and recommendations would be subject to later approval or ratification by other public officials. Adv. Op. No. 89-005.

### **Use of Authority or Influence**

In addition, R.C. 2921.42(A)(1) prohibits a public official from using “the authority or influence of his office” by exercising the power and influence inherent in his public employment to affect the decision-making process regarding the employment of a family member even if the official does not participate in the final act of hiring. See Adv. Op. No. 92-012.

The words “authority or influence of his office” are not defined for purposes of R.C. 2921.42(A)(1). A primary rule of statutory construction requires that words used in a statute that are not defined must be construed according to rules of grammar and common usage. R.C. 1.42. The word “authority” is defined in Webster’s New World Dictionary of the American Language as “power or influence resulting from knowledge, prestige, etc.” Webster’s New World Dictionary of the American Language 94 (2d College ed. 1970). The word “influence” is defined as “the power of persons . . . to affect others, seen only in its effects” and “the ability of a person . . . to produce effects indirectly by means of power based on . . . high position.” Webster’s New World Dictionary of the American Language 722 (2d College ed. 1970). Adv. Op. No. 94-002.

The General Assembly’s use of the words “authority or influence” in R.C. 102.03(D) specifically characterizes a broader range of activity than that described by the word “authorize.” See Dougherty v. Torrence, 2 Ohio St. 3d 69, 70 (1982) (effect must be given to words used in a statute); Dungan v. Kline, 81 Ohio St. 371, 380-81 (the presumption is that every word in a statute is designed to have effect); Adv. Op. No. 74-001 (“it is to be assumed that the Legislature used the language contained in a statute advisedly and intelligently and expressed its intent by the use of the words found in the statute”).

### **Inability to Withdraw From a Hiring Decision or Process**

As noted above, R.C. 2921.42(A)(1) does not create a “no-relatives” policy. Adv. Op. No. 90-010. In most situations, the Ohio Ethics Law and related statutes do not prohibit family members from being employed by the same public agency as long as a public official does not authorize, or use his authority to secure employment, or employment-related benefits, for his family member. However, whenever a public official is required by law to participate in the process of hiring employees for his public agency, then he is unable to withdraw from that process when his family member is being considered for employment with the agency.

The inability of public official to withdraw from the process of hiring employees for his public agency effectively prohibits a family member of the public official from being employed by the public agency. In most instances, this situation occurs where the public official is the sole or ultimate hiring authority, such as a county sheriff. Adv. Op. No. 85-015.

### Hiring of Teachers by a School District

The Ohio Revised Code provides a statutory process for the hiring of teachers, principals, assistant principals, and other necessary administrative officers by a board of education. Under this statutory process, a board of education authorizes an individual teacher's employment with the school district and enters into a written contract of employment with the teacher. R.C. 3319.07 and 3319.08, respectively. The superintendent of a school district is required by law to make recommendations regarding the employment of all teachers, principals, assistant principals, and other necessary administrative officers. R.C. 3319.02 and R.C. 3319.07. See also Educational Serv. Institute, Inc. v Gallia-Vinton Educational Serv. Ctr., 2004-Ohio-874. R.C. 3319.07 provides: "In all school districts and in service centers no teacher shall be employed unless such person is nominated by the superintendent of such district of center."

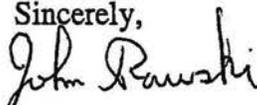
As explained above, R.C. 2921.42(A)(1) prohibits you, as the District's superintendent, from all aspects regarding the employment your spouse by the District. Because R.C. 2921.42(A)(1) prohibits you from "nominating" your spouse as a teacher who should be hired, the prohibition imposed upon you by R.C. 2919.42(A)(1) prevents your spouse from being rehired by the District for a one-year contract after she retires from her teaching position.

### Conclusion

As explained above, R.C. 2921.42(A)(1) prohibits you from authorizing, or using your position to secure authorization, of your spouse's contract for employment with the District. Because the superintendent of a school district is required by law to make recommendations regarding the employment of teachers, you are unable to withdraw from that process when your spouse is being considered for employment with the District. Therefore, the prohibition imposed upon you by R.C. 2919.42(A)(1) prevents your spouse from being rehired by the District after she retires from her teaching position.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on August 11, 2004. The Commission commends you for requesting guidance before taking any actions that could be prohibited by law.

The opinion is based on the facts presented. It is limited to questions arising under Chapter 102. and Sections 2921.42 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 feel free to contact this Office again.

Sincerely,  
  
John Rawski  
Staff Attorney