

OHIO ETHICS COMMISSION

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David E. Freel, *Executive Director*

October 17, 2007

Informal Opinion 2007-INF-1017

David Hunter



Dear Mr. Hunter:

On April 30, 2007, the Ohio Ethics Commission received your letter requesting an advisory opinion. You explained that you are a member of the Board of Education of the Washington Local School District (district). You plan to pursue a master's degree in special education from the University of Toledo. The program requires you to observe and instruct teachers and students in public schools and engage in the educational process as a student teacher.

You have asked whether the Ohio Ethics Laws and related statutes prohibit you from doing the required classroom observation and student teaching in the district where you are a board member. You have also asked when you can apply for or accept a teaching position in the district after you resign from the board of education.

Brief Answer

As explained below, R.C. 102.03(E) prohibits you from doing classroom observation and student teaching in the district where you are a board member. R.C. 102.03(D) and (E), as well as R.C. 2921.42(A)(3), prohibit you from applying for or accepting a teaching position in the district while you are a board member. As long as you did not solicit, or use your position in any way to secure or create, a job opportunity for yourself before you resigned, there is no specific time period you are required to wait after resignation before applying.

Soliciting or Accepting Anything of Value—R.C. 102.03(E)

Your question raises issues under R.C. 102.03(E), which states that no public official or employee shall:

[S]olicit 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.

As a school board member, you are a "public official" subject to this prohibition. R.C. 102.01(B) and (C); Ohio Ethics Commission Advisory Opinion No. 93-001. The term "anything of value" is defined to include money and every other thing of value. R.C. 1.03 and 102.01(G). The acquisition of your master's degree and career opportunities that may follow depends on your successful completion of the university curriculum including observation and student teaching, and is a thing of value.

The application of R.C. 102.03(E) is dependent on the facts and circumstances of each individual situation. Adv. Ops. No. 77-003, 89-003, and 90-002. One key consideration is the position of power and authority a school board member holds over employees and other officials of the district.

A board of education is the ultimate authority to decide matters pertaining to the operation of the school district. A member of a board of education holds a position of power and authority over the hiring, compensation, discipline, and continued employment of district employees, and other terms and conditions of their employment. See R.C. 3313.47 and 3319.07. As a school board member, you must also exercise independence and objectivity of judgment in the performance of this authority. See Adv. Op. No. 89-010 (a public employee owes his responsibility to the exercise of the public trust by performing the tasks assigned to him by his agency without impairment by the employee's concern for his own interests).

The Commission has concluded that the relationship between a superior official and a subordinate employee can create "conditions rife with inherent coercion" when there are also private dealings between the individuals. Adv. Op. No. 93-014. If you were to observe and student teach in the district where you are a board member, you would be engaged in the educational process of the district, under the direction of individuals who are otherwise subordinate to you. The employees would be required to evaluate your performance as an educator, and your attainment of a master's degree may rely on their evaluations. This reversal of authority would create the kind of inherently coercive situation the Ethics Law prohibits.

The benefit you would receive as a result of your field work is of such a character as to substantially and improperly influence you in the performance of your duties as a board member. This is particularly true given the fact that you have indicated that you may want to seek employment with the district after you attain your degree. The relationships you would develop with board officials and employees involved in the special education program while engaged in classroom observation and student teaching would be valuable to you if you were to later seek employment with the district.

Therefore, R.C. 102.03(E) prohibits you from soliciting or accepting the benefits that would accrue to you as an observer and student teacher because your objectivity and independence of judgment as a board member, in matters affecting the employees with whom you would be working, would be impaired by the benefit.

The Commission has explained that, in some circumstances, a public official or employee can withdraw from consideration of matters to avoid a violation of R.C. 102.03(E). See Adv. Op. No. 2007-01 (a village council member who is employed by a college in the village can hold both positions as long as he does not participate in matters before council that affect the college). However, the official's withdrawal cannot interfere with his effective performance of required duties.

Because your master's degree will be in special education, your observations and student teaching will likely be in classrooms involved in the district's special education program. According to the Ohio Department of Education's 2006 District Profile for Washington Local School District, 13.42 percent of the students in the district are identified as students with disabilities. You would not be able to withdraw from all matters involving the special education program of the district in order to avoid a conflict of interest.

Seeking or Accepting Employment with the District

You have explained that, after you receive the proper credentials, you may apply for a teaching position in the district. Because you have indicated that you are familiar with the Commission's earlier guidance on the application of the Ethics Law to a member of a public agency's governing board who is seeking employment with the agency, this opinion will only briefly summarize the restrictions.

The Commission has explained that a member of a governing board for a public agency is prohibited from profiting from an employment contract or hire that was authorized by the board while he is a board member. R.C. 2921.42(A)(3); Adv. Op. No. 87-008. If a governing board member is hired by the board before he resigns from the board, he will be in violation of R.C. 2921.42(A)(3) even if he does not vote on his own hire. Adv. Op. No. 87-008.

Further, the Commission has explained that a member of a governing board for a public agency is prohibited from seeking employment with the agency while he is a board member, and from using his position in any way to secure an employment opportunity with the agency. R.C. 102.03(D) and (E); Adv. Op. No. 87-008. Among other things, the board member is prohibited from: (1) participating in the creation of a position, or decisions to significantly alter the position or its compensation, if he will apply for the position; (2) applying for a position with the public agency while he is a member of the board; and (3) discussing employment with the agency's employees or any of the other board members.

The Commission has explained that, while the law does not prohibit a former board member from competing for a job with the public agency, it must be clear that he did not use his position, while on the board, to secure the job. In order for you to apply for a job with the district after you attain your master's degree, you must resign from the board before you engage in any discussion of your possible employment with board officials or employees (including the superintendent and any instructor involved in the district's special education program). As long as you do not discuss possible employment with board personnel, and do not use your position in any other way to secure

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district employment (such as making changes to a job's qualifications to favor yourself), the Ethics Law does not prohibit you from applying for a job with the district after you resign. While the Commission has explained that the time between resignation and application must be long enough to demonstrate that the board member did not use his position to secure the job, the law does not set forth a specific time period he must wait. Adv. Op. No. 87-008.

Conclusion

As explained more fully above, R.C. 102.03(E) prohibits you from doing classroom observation and student teaching in the district where you are a board member. R.C. 102.03(D) and (E), as well as R.C. 2921.42(A)(3), prohibit you from applying for or accepting a teaching position in the district while you are a board member. As long as you did not solicit, or use your position in any way to secure or create, a job opportunity for yourself before you resigned, there is no specific time period you are required to wait after resignation before applying.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on September 26, 2007. 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,

A handwritten signature in cursive script, appearing to read "Jennifer A. Hardin".

Jennifer A. Hardin
Chief Advisory Attorney