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INFORMATION SHEET: ADVISORY OPINION NO. 2010-01
APPLICATION OF ETHICS LAW TO COMMUNITY SCHOOL OFFICIALS

What is the question addressed in the opinion?

Are members of the governing board of a community school subject to the Ohio Ethics Law and related statutes?

What is the answer in the opinion?

Yes. All governing boards of community schools are required to sign contracts agreeing to be bound by Chapter 102. and Section 2921.42. Because governing boards of community schools are agents of public agencies, the governing board members are also subject to R.C. 2921.43.

All officers and employees of a community school are also subject to the revolving door, confidentiality, conflict of interest, representation, public contract, and supplemental compensation restrictions in the Ethics Law and related statutes. Teachers who do not perform and have no authority to perform supervisory or administrative functions are exempted from revolving door and conflict of interest prohibitions.

What prompted this opinion?

In Advisory Opinion No. 2003-01, the Commission first considered this question. At that time, the law that governed the application of the Ethics Law to community school officials and employees included several exceptions. Recently, the law was amended and the exceptions were removed. The Commission issued this opinion to make certain that all community school officials and employees subject to the law were aware of the statutory changes. This opinion specifically **overrules** the conclusions in Advisory Opinion No. 2003-01 regarding limits on the application of the Ethics Law and related statutes.

When will the conclusions of the opinion become effective?

The opinion became effective upon acceptance by the Commission.

For More Information, Please Contact:

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IT IS NOT AN ETHICS COMMISSION ADVISORY OPINION.
ADVISORY OPINION NO. 2010-01 IS ATTACHED.

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Advisory Opinion
Number 2010-01
April 22, 2010

Syllabus by the Commission:

- (1) All members of the governing board of a community school are subject, without limitation, to the provisions of the Ohio Ethics Law as set forth in Chapter 102., which include post-employment, confidentiality, conflict of interest, gifts, and representation restrictions;
- (2) All members of the governing board of a community school are also subject, without limitation, to Sections 2921.42 and 2921.43 of the Revised Code, which include public contract, nepotism, and supplemental compensation restrictions;
- (3) These conclusions also apply to all officers and employees of a community school, although teachers and other educators who do not perform, and have no authority to perform, supervisory or administrative functions are not subject to the post-employment and conflict of interest restrictions in R.C. 102.03;
- (4) Because Section 3314.03(A)(11)(e) of the Revised Code has been amended by the General Assembly, the Commission specifically **overrules** its conclusions in Advisory Opinion No. 2003-01 regarding the limited exceptions, for community school governing board members, on the application of the Ethics Law and related statutes.

* * *

In 2003, the Ohio Ethics Commission considered whether members of the governing boards of community schools created under R.C. Chapter 3314. were subject to the Ohio Ethics Law and related statutes. Ohio Ethics Commission Advisory Opinion No. 2003-01. In the intervening years, the laws that govern community schools have been amended several times. For that reason, the Commission is reconsidering its earlier advisory opinion about community schools.

School Options

Because this opinion refers specifically to community schools, it is helpful to describe the various types of school options, other than public schools, available in the state:

- A “community school” created under R.C. Chapter 3314. is a nonprofit, nonsectarian school that operates independent of any school district and is a part of the state’s program of education. R.C. 3314.01(B). A community school operates under a contract with a sponsoring entity, which may be a school district, state university, or education nonprofit corporation. R.C. 3314.02(C)(1). Community schools are sometimes called “charter” schools.
- A chartered, nonpublic (private) school is chartered by the state. R.C. 3301.16. Chartered, nonpublic schools are not supported by tax dollars but do qualify for transportation, auxiliary services, and administrative-cost reimbursement. R.C. 3317.06, R.C. 3317.063, and 3327.01.
- A non-chartered, nonpublic (private) school does not have or seek a charter from the state because of truly held religious beliefs. OAC 3301-35-08. Non-chartered, nonpublic schools receive no tax dollars and do not qualify for transportation, auxiliary services, or administrative-cost reimbursement.

Chartered, nonpublic schools and non-chartered, nonpublic schools are not community schools and the conclusions in this opinion do not apply to them.

Commission Opinion Regarding Community Schools

In Advisory Opinion No. 2003-01, the Commission concluded that members of community school governing boards were subject to the Law. The Commission further concluded that officers and employees of community schools, with some limits for teachers, were subject to the Ethics Law and related statutes.

The Commission also acknowledged a specific exception that applied to community school governing board members. The exception was in R.C. 3314.03, which sets forth the terms of the contract between a community school and its sponsor. In 2003, R.C. 3314.03(A)(11)(e) provided that the community school would agree, in its contract, to adhere to most, but not all, of the provisions of the Ethics Law and related statutes. Ohio Ethics Commission Advisory Opinion No. 2003-01. The Commission concluded that, because of the exception in R.C. 3314.03(A)(11)(e), a member of a community school’s governing board could:

- Be employed by the school without violating R.C. 102.03(D) and (E); and
- Be employed by or enter into a contract, except a contract with a for-profit firm for the operation or management of the school, with the community school without violating 2921.42(A)(3) or (A)(4).

Since 2003, when the Commission considered this question, R.C. 3314.03(A)(11)(e) has been amended and the exception was removed. Now the statute requires that the school “shall comply with Chapter 102. and section 2921.42 of the Revised Code.”

The Commission has chosen to revisit this matter in order to ensure that no governing board members, officials, or employees of community schools rely on its holdings in Advisory Opinion No. 2003-01 now that the law has been amended. This opinion will clarify the

application of the Ethics Law and related statutes to community school governing board members, officials, and employees.

Revolving Door, Confidentiality, Conflict, and Representation—R.C. 102.03 and 102.04

The Commission specifically **affirms** its conclusion in Advisory Opinion No. 2003-01 that members of the governing board, officers, and employees of community schools are subject to R.C. Chapter 102.:

[A] member of the governing board of a community school is subject to the restrictions imposed upon “public officials and employees” by R.C. Chapter 102. By requiring that the “school” shall comply with Chapter 102., the General Assembly has expressed, in unambiguous terms, its intent to require officers and employees of community schools to comply with the requirements of the Ethics Law.

Because R.C. 3314.03(A)(11)(e) has been amended, and the exception formerly contained in that section was removed, the Commission specifically **overrules** its conclusions in Advisory Opinion No. 2003-01 regarding limits to the application of R.C. Chapter 102. In this opinion, the Commission holds that, with the exception of teachers who do not perform and have no authority to perform administrative or supervisory functions, the restrictions in Chapter 102. fully apply to members of the governing board, officers, and employees of community schools.

R.C. 102.03 includes restrictions on revolving door/post-employment, certain types of confidential information, and conflicts of interest. R.C. 102.04 prohibits public officials and employees from participating in certain kinds of representation. Teachers who do not perform, and have no authority to perform, administrative or supervisory functions are subject to R.C. 102.04(C) but not to R.C. 102.03. Adv. Op. No. 93-017.

Public Contract and Supplemental Compensation Restrictions—R.C. 2921.42 and 2921.43

The Commission specifically **affirms** its conclusion in Advisory Opinion No. 2003-01 that members of the governing board, officers, and employees of community schools are subject to R.C. 2921.42 and 2921.43. R.C. 2921.01 includes “agents of the state,” as well as public officers and employees, within the class of individuals who are “public officials” subject to R.C. 2921.42. Therefore:

A member of the governing board of a community school is an “agent of the state” for purposes of R.C. 2921.01, and is subject to the public contract restrictions in R.C. 2921.42. Because they are “public officials,” members of the governing board of a community school are also subject to the restrictions imposed by R.C. 2921.43, which prohibits a public official from accepting compensation for the performance of his public duties from anyone other than the public agency he serves.

Because R.C. 3314.03(A)(11)(e) has been amended, and the exception formerly contained in that section was removed, the Commission specifically **overrules** its conclusions in Advisory Opinion No. 2003-01 regarding limits to the application of R.C. 2921.42. In this opinion, the Commission holds that the restrictions in R.C. 2921.42 and R.C. 2921.43 fully apply to the members of the governing board, officers, and employees of community schools, including all teachers, without exception.

R.C. 2921.42 sets forth public contract restrictions, including the prohibition against nepotism. R.C. 2921.43 is the supplemental compensation restriction, barring any public servant from receiving payment from any source other than the agency.

Conclusion

This advisory opinion 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.

Therefore, it is the opinion of the Ohio Ethics Commission, and the Commission advises that: All members of the governing board of a community school are subject, without limitation, to the provisions of the Ohio Ethics Law as set forth in Chapter 102., which include post-employment, confidentiality, conflict of interest, gifts, and representation restrictions. All members of the governing board of a community school are also subject, without limitation, to Sections 2921.42 and 2921.43 of the Revised Code, which include public contract, nepotism, and supplemental compensation restrictions. These conclusions also apply to all officers and employees of a community school, although teachers and other educators who do not perform, and have no authority to perform, supervisory or administrative functions are not subject to the post-employment and conflict of interest restrictions in R.C. 102.03. Finally, because Section 3314.03(A)(11)(e) of the Revised Code has been amended by the General Assembly, the Commission specifically **overrules** its conclusions in Advisory Opinion No. 2003-01 regarding the limited exceptions, for community school governing board members, on the application of the Ethics Law and related statutes.

By my signature below, I certify that Advisory Opinion No. 2010-01 was rendered by the Ohio Ethics Commission at its meeting on April 22, 2010.



Ben Rose, Chair
Ohio Ethics Commission