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INFORMATION SHEET: ADVISORY OPINION NO. 2011-06
COMPENSATION FOR BOARD SERVICE

What is the question addressed in the opinion?

Can a member of a state board, who is also employed by a public university, accept compensation from the board to attend meetings or perform other board tasks without taking leave time from her university employment?

What is the answer in the opinion?

No. A compensated member of a state board, who is also an employee of a public university, is prohibited from accepting compensation from the board for any time while she is performing services for the board if she is also be paid by the university for the same time.

What prompted the opinion?

The opinion was prompted by a request for an advisory opinion.

To whom do the conclusions in the opinion apply:

The opinion specifically considers a university employee. However, the conclusions will apply to any employee of a public agency, private corporation, non-profit organization, or other entity who serves on a state board or commission.

When did this opinion become effective?

Advisory Opinion No. 2011-06 became effective when it was approved by the Commission at its meeting on June 17, 2011.

For More Information, Please Contact:

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IT IS NOT AN ETHICS COMMISSION ADVISORY OPINION.
ADVISORY OPINION NO. 2011-06 IS ATTACHED.**

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Advisory Opinion
Number 2011-06
June 17, 2011
**COMPENSATION FOR
BOARD SERVICE**

Syllabus by the Commission:

A compensated member of a state board, who is also an employee of a public university, is prohibited from accepting compensation from the university for any time while she is being paid to perform services for the board.

* * * * *

The Ohio Ethics Commission has been asked whether a member of a state board, who is also employed by a public university, can accept compensation to attend board meetings or perform other tasks for the board without taking leave time from her university employment.

While this opinion specifically considers a university employee, the conclusions will apply to any employee of a public agency, private corporation, non-profit organization, or other entity who serves on a state board or commission.

Facts:

- A person serves on a state regulatory board;
- Board members receive hourly compensation for performing their duties based on pay scales established by statute and administered by the Department of Administrative Services; and
- The board member is also a full-time, salaried, exempt employee of a state university.

Question and Brief Answer

Question: Can the board member accept compensation for attending board meetings and performing board duties without taking “leave time” from her employment?

Answer: No. While she is engaged in board duties and being paid by the board, the board member cannot also be compensated by the university.¹ However, the board member is not specifically required to take leave time from her employment.

Conflict of Interest—R.C. 102.03(D)

The conflict of interest law, R.C. 102.03(D), provides:

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.

In both of her public positions, the board member is a “public official or employee.”² The compensation a person receives for employment or board service is within the definition of “anything of value.”³

In Ohio Ethics Commission Advisory Opinion No. 96-004, the Commission concluded that R.C. 102.03(D) prohibits a public official or employee from using public time, facilities, personnel, or resources while engaging in outside activities such as employment. While board service is not outside employment, it is separate from the board member's public employment with the university. Therefore, the conflict of interest law would prohibit the board member from being paid to provide services to the board while also being compensated by, or in compensated status at, the university.⁴

While engaged in activities for which she is compensated as a board member, the university employee must either: (1) take some kind of leave from her university employment; or (2) exclude the hours spent on board duties from time logs or other reports of her university employment hours.

Provided that the board member is not being paid for or counting hours during which she is engaged in board duties toward her required hours for the university, she is not prohibited from accepting compensation from the board for these hours.

Supplemental Compensation—R.C. 2921.43(A)(1)

The board member has specifically asked whether the supplemental compensation law (R.C. 2921.43(A)(1)) would be violated in this situation. R.C. 2921.43(A) prohibits a public servant from soliciting or accepting “[a]ny compensation, other than as allowed by . . . provisions of law, to perform the public servant's official duties, to perform any other act or service in the public servant's public capacity, for the general performance of the duties of the public servant's public office or public employment, or as a supplement to the public servant's public compensation.”

The board member is a “public servant” in both positions she holds.⁵ R.C. 2921.43(A) would prohibit her, unless specifically allowed by law, from receiving compensation from:

- The board or any other source except the university for performing her public duties as a university employee; and
- The university or any other source except the board for performing her public duties as a board member.

If the board member is compensated by the university on an hourly basis, R.C. 2921.43(A) would prohibit her from receiving her hourly compensation from the university for any hour when she is engaged in performing services for the board. The board member would be required to take some kind of leave from the university while performing her compensated duties for the board. She could take any kind of leave, whether paid or unpaid, from her university employment to perform services for the board.

If the board member is compensated by the university on a salaried basis, as in this situation, the R.C. 2921.43(A) prohibition still applies. The supplemental compensation law prohibits her from accepting compensation from the university for any time she is engaged in performing services for the board. The university employee must exclude the time she spends while engaged in board activity from any time logs or other reports of her university employment hours. If she is not required to record her time for the university, she must fulfill her employment obligations to the university during hours when she is not compensated by the board.

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: A compensated member of a state board, who is also an employee of a public university, is prohibited from accepting compensation from the university for any time while she is being paid to perform services for the board.

By my signature below, I certify that Advisory Opinion No. 2011-06 was rendered by the Ohio Ethics Commission at its meeting on June 17, 2011.



Ben Rose, Chair
Ohio Ethics Commission

¹ The Commission notes that when a public servant receives compensation for performing public services from more than one source, the theft in office law (R.C. 2921.41) may also apply. This opinion does not consider or reach any conclusions about the theft in office law because it is not within the Commission's jurisdiction.

² R.C. 102.01(B) and (C); Ohio Ethics Commission Advisory Opinions No. 2011-04 and 90-012.

³ R.C. 102.01(G); Adv. Op. No. 96-004.

⁴ The board member should also determine whether there are any other conflict of interest provisions, in the Revised Code or Administrative Code, that apply. See, e.g., R.C. 4723.02.

⁵ R.C. 2921.01(B); Adv. Ops. No. 2011-04 and 90-012.