



## OHIO ETHICS COMMISSION

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Advisory Opinion Number 87-002  
February 26, 1987

### Syllabus by the Commission:

- (1) A member of a county board of elections is connected with the county which **he** serves for purposes of Division (A)(4) of Section 2921.42 of the Revised Code.
- (2) Division (A)(4) of Section 2921.42 of the Revised Code prohibits a member of the county board of elections from selling property or services to the county, unless all of the criteria for the exemption of Division (C) of Section 2921.42 of the Revised Code are met.

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In your request for an advisory opinion from the Ohio Ethics Commission, you asked whether a member of the county board of elections is prohibited by the Ohio Ethics Law or related statutes from selling various materials and supplies to the county.

By way of history, the board member owns, and is the president of, a company which sells paper and cleaning supplies, and food items. You have indicated that the board member would not engage in business with the board of elections, but wishes to sell goods to other boards, agencies, and instrumentalities of the county.

Section 2921.42 of the Revised Code provides, in pertinent part:

(A) No public official shall knowingly do any of the following: . . .

(4) Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which he is connected.

Division (A)(4) of Section 2921.42 prohibits a public official from having either a pecuniary or fiduciary interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency with which he is connected. See Ohio Ethics Commission Advisory Opinion No. 81-008. The term "public official," as used in Section 2921.42, is defined in Division (A) of Section 2921.01 of the Revised Code as: "any elected or appointed officer, or employee, or agent of the state or any political subdivision thereof, whether in a temporary or permanent capacity, and including without limitation legislators, judges, and law enforcement officers." In order to determine the applicability of Section 2921.42 to members of county boards of elections, it is first necessary to determine whether members of the boards of elections are "public officials." In making this determination, it is instructive to examine those

statutes which establish county boards of elections and their operation, and provide for the appointment, compensation and duties of board members.

Pursuant to Section 3501.06 of the Revised Code, there is established in each county of the state a board of elections. The duties of a board of elections are set forth in Section 3501.11 of the Revised Code, and concern generally the planning, supervision, and conducting of elections.

Under Section 3501.06, each board of elections consists of four qualified electors of the county who serve four-year terms. In even-numbered years the Secretary of State must appoint two of the board members, who shall be from the two political parties which cast the highest number of votes for the Office of Governor at the last preceding regular state election. Although the Secretary of State is empowered to appoint the members of each board, he must appoint the elector who is recommended by the county executive committee of the major political party entitled to the appointment, unless he has reason to believe that the elector would not be a competent member of the board. See R.C. Section 3501.07. If no recommendation is made, the Secretary of State shall make the appointment. Id. The Secretary of State may also summarily remove any member of a board of elections for good cause. See R.C. Section 3501.16.

The annual compensation of board members is set by statute and is based upon the population of the county pursuant to Section 3501.12 of the Revised Code. Such compensation is paid out of the appropriations made to the board by the county and is paid from the county treasury. Id. See also R.C. Section 3501.17. Pursuant to Section 3501.17, all other expenses of the board of elections are also paid from the county treasury, under appropriations by the board of county commissioners, "in the same manner as other county expenses are paid." Section 3501.17 also provides, however, a method by which expenses of certain elections may be charged against other political subdivisions within the county. The board of elections is required by Section 3501.10 to lease suitable rooms for its offices, as an expense of the board, subject, however, to the right of the board of county commissioners to void such action.

Returning to Sections 2921.01 and 2921.42, it is readily apparent from the foregoing that a member of a county board of elections is an appointed officer of the state or a political subdivision thereof. See generally State ex rel. Milburn v. Pethtel, 153 Ohio St. 1 (1950) (holding members of boards of elections to be public officers); Ohio Ethics Commission Advisory Opinions No. 74-007 and 74-003. Therefore, a board member is subject to the prohibitions of Section 2921.42 of the Revised Code.

As stated above, Division (A)(4) of Section 2921.42 of the Revised Code prohibits a public official from having "an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which he is connected." You state in your letter that, in this instance, the board member and county do not contemplate entering a contract, but that the county wishes to purchase such supplies from the board member as they are needed. Division (E) of Section 2921.42 of the Revised Code states, however, that, as used in Section 2921.42, "public contract" includes "the purchase or acquisition, or a contract for the purchase or acquisition of property or services by or

for the use of the state or any of its political subdivisions, or any agency or instrumentality of either" (emphasis added).

Thus, where a county purchases property or services on a casual or "as needed" basis, as well as where it has entered into a formal contract for the purchase of property or services, either such purchase would constitute a "public contract" within the definition of Division (E) of Section 2921.42. Under the facts you have presented, it is apparent that the board member and county are contemplating a "public contract," as that term is used in Section 2921.42 of the Revised Code.

In order for Division (A)(4) of Section 2921.42 of the Revised Code to apply, a public official must have an interest in a public contract that is "entered into by or for the use of the political subdivision or governmental agency or instrumentality with which he is connected" (emphasis added). As set forth in Chapter 3501. of the Revised Code, and discussed above, it is clear that a member of a county board of elections is "connected" with the county which he serves. The jurisdiction of a board of elections is county-wide, and the board conducts all elections within that county. Thus, the duties of a board member are exercised on a county-wide basis. Although the Secretary of State, a state officer, has the power to appoint and remove board members, he is compelled to appoint the nominee of the county executive committee of the political party entitled to the appointment, absent reason to believe the nominee would not be competent to serve. A board member is compensated, based upon the population of the county which he serves, and is paid from moneys appropriated by the board of county commissioners and paid from the county treasury, as are all other expenses of the board of elections. Finally, the board of county commissioners has the power to veto the actions of the board of elections in choosing suitable office space. See also 1981 Op Att'y Gen. No. 81-015 at 2-57 (stating that the board of elections is operated and funded like any other county office or board and that the service of the members of a board of elections is to the county).

Although Section 2921.42 does not define "connected" as used in the statute, common usage indicates that to be "connected with" something is to be related to, or associated with, that entity. See Webster's New World Dictionary 301 (2d college ed. 1972). See also R.C. Section 1.42 (words and phrases used in a statutes shall be construed according to the rules of grammar and common usage). There is no question but that a member of a board of elections is related to, or associated with, the county which he serves through a series of significant contacts with that county. A board member's jurisdiction, duties, appointment, compensation, and expenses are all associated with, and dependent upon, the county. Therefore, a member of a board of elections is "connected with" the county.

There is authority to the effect that a member of a board of elections is a state officer. See, e.g., State ex rel. Columbus Blank Book Manufacturing Co. v. Ayres, 142 Ohio St. 216 (1-943); Ohio Ethics Commission Advisory Opinion No. 74-007 (members of county boards of elections are state officers for purposes of Division (A) of Section 102.04 of the Revised Code, and thus are prohibited from receiving compensation, other than from the agency with which they serve, for any service rendered by them personally in any matter before any agency of the state); 1986 Op. Att'y. Gen. No. 86-077 (members of a board of elections are not in the "county service" for purposes of R.C. 124.38, which grants sick leave benefits to employees who are in

the county service). Such conclusion is based generally on the fact that board members are appointed, and may be removed, by the Secretary of State and serve as his representative on the local level.

There is no question but that members of boards of elections may be considered, for certain purposes, to be state officers. It is unnecessary for purposes of this opinion, however, to characterize board members as either state officers or county officers in determining the applicability of Division (A)(4) of Section 2921.42 of the Revised Code. It is necessary only to determine whether a board member is "connected" with the county in order to decide whether a board member may enter into a public contract with the county.

Having concluded that a member of a board of elections is "connected" with the county, it necessarily follows that a board member may not have an interest in a public contract entered into by the county, and thus may not sell services or property to the county. It is of no consequence that the board member does not propose to sell goods to the board of elections itself, since the prohibition of Division (A)(4) of Section 2921.42 of the Revised Code prevents a public official connected with a political subdivision from contracting with the political subdivision as a whole and not just with the particular agency, board, or department of the political subdivision which he serves. See generally Ohio Ethics Commission Advisory Opinions No. 85-003 and 84-002.

Although a board member is generally prohibited from selling property or services to the county, Division (C) of Section 2921.42 provides an exception to this prohibition, reading as follows:

This section does not apply to a public contract in which a public servant, member of his family, or one of his business associates has an interest, when all of the following apply:

- (1) The subject of the public contract is necessary supplies or services for the political subdivision or governmental agency or instrumentality involved;
- (2) The supplies or services are unobtainable elsewhere for the same or lower cost, or are being furnished to the political subdivision or governmental agency or instrumentality as part of a continuing course of dealing established prior to the public servant's becoming associated with the political subdivision or governmental agency or instrumentality involved;
- (3) The treatment accorded the political subdivision or governmental agency or instrumentality is either preferential to or the same as that accorded other customers or clients in similar transactions;

In Advisory Opinion No. 83-004, the Ohio Ethics Commission, in discussing the requirements of Division (C) of Section 2921.42, stated that:

These criteria are strictly applied, and the burden is on the public official claiming the exemption to demonstrate compliance. It is particularly important that the requirement that the

goods or services are "unobtainable elsewhere for the same or lower cost" be demonstrated by some objective standard.

Advisory Opinion No. 84-011 further states that:

[T]he application of the exemption [provided in Division (C) of Section 2921.42] must be consistent with the principle underlying Section 2921.42 of the Revised Code that a public official should not have an interest in a public contract with the governmental entity with which he serves unless the contract is the best or only alternative available to the governmental entity.

Thus, the board of elections member must demonstrate that he meets all four criteria of Division (C) of Section 2921.42 before he may sell goods or products to the county.

This advisory opinion is based on the facts presented, and is limited to questions arising under Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code.

Therefore it is the opinion of the Ohio Ethics Commission, and you are so advised, that: (1) a member of a county board of elections is connected with the county which he serves for purposes of Division (A)(4) of Section 2921.42 of the Revised Code; and (2) Division (A)(4) of Section 2921.42 of the Revised Code prohibits a member of the county board of elections from selling property or services to the county, unless all of the criteria for the exemption of Division (C) of Section 2921.42 of the Revised Code are met.



Merom Brachman, Chairman  
Ohio Ethics Commission