



OHIO ETHICS COMMISSION

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Advisory Opinion Number 88-002
January 13, 1988

Syllabus by the Commission:

Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a deputy director of the Office of Budget and Management who is the President of the Controlling Board from accepting, soliciting, or using his official authority or influence to secure employment with a state agency.

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You have asked whether the Ohio Ethics Law and related statutes prohibit a deputy director of the Office of Budget and Management, who serves in that capacity as the President of the Controlling Board, from being employed by Cleveland State University as a part-time instructor.

Divisions (D) and (E) of Section 102.03 of the Revised Code read as follows:

(D) No public official or employee shall use or authorize the use of the authority or influence of his 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 him with respect to his duties.

(E) No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties.

The term "public official or employee" is defined for purposes of R.C. 102.03 to include any person who is appointed to an office or is an employee of any department or board of the state. See R.C. 102.01(B) and (C). The Office of Budget and Management is an administrative department of the state, see R.C. 121.02, R.C. Chapter 126, and the Controlling Board is a board of the state, see R.C. 127.12. Therefore, an individual who serves as a deputy director of the Office of Budget and Management and as the President of the Controlling Board is a "public official or employee" for purposes of R.C. 102.03, and is subject to the prohibitions of that section.

The term "anything of value" is defined for purposes of R.C. 102.03 to include money, the promise of future employment, and every other thing of value. See R.C. 1.03 and R.C. 102.01(G). Employment with an agency is considered to be "anything of value" for purposes of R.C. 102.03. See Ohio Ethics Commission Advisory Opinions No. 77-006, 84-009, and 87-006.

See also Advisory Opinions No. 77-003, 79-002, and 82-002. Therefore, a deputy director of the Office of Budget and Management (hereinafter referred to as OBM) who serves as the President of the Controlling Board would be prohibited by R.C. 102.03(D) and (E) from

accepting, soliciting, or using his official authority or influence to secure employment with Cleveland State University if such employment is of such a character as to manifest a substantial and improper influence upon him with respect to his official duties. In making this determination, it is instructive to examine the powers and duties of the Controlling Board.

The Controlling Board (hereinafter Board) is created pursuant to Section 127.12 of the Revised Code and consists of the director of Budget and Management or an employee of the Office of Budget and Management designated by the director, and six members of the General Assembly. The director of OBM or his designee is the President of the Controlling Board and prepares the proposed agenda for meetings of the Board. See R.C. 127.13. The Board has the power, upon the request or application of a state agency, to make certain transfers of all or part of an appropriation of moneys, including the power to: (1) transfer an appropriation within a state agency; (2) transfer an appropriation from one fiscal year to another; (3) transfer an appropriation within or between state agencies in cases of administrative reorganization; (4) transfer appropriations included in the emergency purposes appropriation account of the Board; (5) transfer or release an appropriation to a state agency requiring Board approval of such transfer or release pursuant to law; and (6) transfer an appropriation or other moneys into and between existing funds, or new funds. See R.C. 127.14. The Board may also authorize a state agency which has received an appropriation in an act making appropriations for capital improvements, to otherwise spend such moneys. See R.C. 127.15. The Board has the power, at the request of a state agency, to: (1) consent to the construction or repair of any building or the making of any other improvement by force account; (2) permit the advertisement for bids for the construction or repair of any building or the making of any other improvement to be published less frequently than otherwise required by law; (3) waive competitive bidding requirements for a state agency's purchase of equipment, materials, or supplies costing more than five thousand dollars, or construction or repair of any building or making of any other improvement costing ten thousand dollars or more; and (4) approve a state agency's purchases of services, equipment, materials, or supplies totaling ten thousand dollars or more from a particular supplier. See R.C. 127.16.

The Ethics Commission has held that a public official or employee is prohibited from accepting, soliciting, or using his official authority or influence to secure anything of value from parties that are regulated by, doing business or seeking to do business with, or interested in matters before, the agency with which he serves. See Advisory Opinions No. 79-002, 84-009, and 86-011. See also Advisory Opinions No. 79-006 and 86-008. In examining the statutory duties of the Controlling Board, it is apparent that state agencies are regulated by the Board, and may be interested in specific matters before the Board on a recurring basis. The Board has the power to make many critical decisions concerning the budgetary and administrative operations of state agencies. State agencies must obtain the approval of the Controlling Board in making various decisions as to the use of funds, the construction or repair of buildings and other improvements, and the purchase of equipment, materials, services, and supplies. Cleveland State University is a state agency, see R.C. Chapter 3344, and as such, is regulated by, and interested in matters before, the Controlling Board. Therefore, a deputy director of OBM who serves as the President of the Controlling Board is prohibited by R.C. 102.03(D) and (E) from accepting employment with Cleveland State University, as well as from soliciting, or using his official authority or influence to secure such employment.

The Ethics Commission has also held that a public official or employee is prohibited by R.C. 102.03 from holding outside employment if such employment "could impair his

independence of judgment with regard to his official decisions and responsibilities." Advisory Opinion No. 87-006. See Advisory Opinions No. 77-003, 84-009, and 86-008. See also Advisory Opinions No. 79-002 and 79-006. More specifically, the Commission indicated in Advisory Opinion No. 77-006 that a person appointed or employed by one state agency with review authority over another agency may be subject to a conflict of interest if he were then to be employed by the agency subject to review. The President of the Controlling Board is statutorily charged with considering and deciding matters affecting state agencies which come before the Board. He must fulfill those duties objectively and impartially as to each state agency. That objectivity or independence of judgment could be impaired if he also served in a capacity with a particular agency of the state. Therefore, a deputy director of OBM who serves as the President of the Controlling Board may not be employed by an agency of the state.

A deputy director of OBM who serves as President of the Controlling Board would not, however, be prohibited by R.C. 102.03 from serving with Cleveland State University as an instructor if he received no compensation other than the payment of reasonable expenses. R.C. 102.03(D) and (E) prohibit a public official or employee from soliciting, accepting, or using his official authority or influence to secure anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties. If the deputy director were to receive no compensation or other thing of value for providing teaching services to Cleveland State University, then R.C. 102.03 would not apply to such an arrangement. Further, no other provision of the Ethics Law would prohibit the deputy director from acting as an instructor at Cleveland State if he received no compensation or other benefits except expenses. It must be noted, however, that Division (A)(1) of Section 2921.42 of the Revised Code prohibits a public official, including any appointed officer or employee of the state, see R.C. 2921.01(A), from authorizing or employing "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." If the deputy director were to serve as an instructor with Cleveland State University, the University would be considered his "business associate" for purposes of R.C. 2921.42, regardless of whether he received compensation. See generally Advisory Opinions No. 85-004 and 86-002. Therefore, he would be prohibited-, as deputy director and President of the Controlling Board, from authorizing, or discussing, deliberating, or voting upon the authorization of, any public contract in which Cleveland State University has an interest. See R.C. 2921.42(E) (defining "public contract" for purposes of that section).

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, and does not purport to interpret other laws or rules.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a deputy director of the Office of Budget and Management who is the President of the Controlling Board from accepting, soliciting, or using his official authority or influence to secure employment with a state agency.



Merom Brachman, Chairman
Ohio Ethics Commission