



OHIO ETHICS COMMISSION
THE ATLAS BUILDING
8 EAST LONG STREET, SUITE 1200
COLUMBUS, OHIO 43215-2940
(614) 466-7090

Advisory Opinion No. 91-002
August 21, 1991

Syllabus by the Commission:

- (1) This advisory opinion overrules Advisory Opinion No. 75-030 due to legislative amendment;
- (2) Division (A)(4) of Section 2921.42 of the Revised Code and Division (E) of Section 102.03 of the Revised Code do not prohibit a city council member from serving as an unpaid volunteer paramedic with the fire department of the city, provided he receives no definite and direct personal pecuniary benefit from such service;
- (3) Division (D) of Section 102.03 of the Revised Code prohibits a city council member who serves as an unpaid volunteer paramedic with the fire department of the city from voting, deliberating, participating in discussions, or otherwise using the authority or influence of his office, either formally or informally, with regard to matters affecting the fire department and its personnel.

* * * * *

You have asked whether the Ohio Ethics Law and related statutes prohibit a city council member from serving as an unpaid volunteer paramedic with the city fire department. You also ask whether the city council member may continue to serve as the chairman of the city council's safety committee if he is not prohibited from serving as an unpaid volunteer paramedic with the city fire department.

Your question also raises the issue of "compatibility" of public positions -- that is, whether one person may simultaneously hold two public positions. Seven criteria which are independent of the statutes under the Ethics Commission's jurisdiction are used to determine "compatibility". See 1979 Ohio Op. Att'y Gen. No. 79-111. An advisory opinion rendered by the Ethics Commission interpreting Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code is not the same as a determination of compatibility. See 1990 Ohio Op. Att'y Gen. No. 90-037. The City Law Director is the appropriate person to determine whether a city council member may simultaneously hold another city position. See R.C. 733.54. In the instant situation the City Law Director has rendered a memorandum which states that the positions are not incompatible provided no public funds are paid for the volunteer services.

You state that before his election to city council, the city council member was employed by the city fire department. Upon taking office, the council member took a leave of absence from the fire department and resigned from the city firefighters' association. Upon resigning he

expressed a desire to serve the fire department as an unpaid volunteer paramedic while holding office as a city council member. The city fire chief and the city firefighters' association have approved the council member's service on the fire department as an unpaid volunteer.

You have stated that by continuing to serve the fire department as a volunteer paramedic the city council member will be able to keep his paramedic certification current. You have also stated that the council member would be covered by Ohio workers' compensation and fully insured under the city's liability insurance policy while serving as an unpaid volunteer paramedic.

The threshold issue is whether the Ohio Ethics Law and related statutes prohibit a city council member from serving as an unpaid volunteer with the fire department of the city with which he serves.

R.C. 2921.42 (A)(4) provides:

(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.

The term "public official" is defined for purposes of Section 2921.42 in Section 2921.01 (A) to include any elected or appointed officer of a political subdivision. A city council member is a public official for purposes of R.C. 2921.42 and is subject to its prohibitions. See Ohio Ethics Commission Advisory Opinions No. 79-005, 80-001, 81-008, and 89-008. See also R.C. 731.02 (prohibiting city council members from holding other public office, being interested in city contracts, or holding employment with the city).

The term "public contract" is defined in R.C. 2921.42 (E)(1) for purposes of that section to include the purchase or acquisition or a contract for the purchase or acquisition of property or services by or for the use of a political subdivision. An "interest" which is prohibited under R.C. 2921.42 must be definite and direct, and may be either pecuniary or fiduciary in nature. See Advisory Opinion No. 81-008. The facts and circumstances of each particular situation determine whether a public official has an "interest" in a public contract with his own political subdivision. See Advisory Opinion No. 84-009.

The Ethics Commission has consistently held that an employment relationship between a political subdivision and an employee is a "public contract" for purposes of R.C. 2921.42, since the political subdivision is purchasing or acquiring the employee's services. See Advisory Opinions No. 82-003, 85-003, 85-015, 86-010, 89-005, 89-015, and 90-010. Accordingly, R.C. 2921.42 (A)(4) prohibits an elected officer of a political subdivision from having a pecuniary interest in an employment contract with his own political subdivision.

In the instant situation, the city council member took a leave of absence from his compensated position with the fire department upon taking office and now serves as an unpaid

volunteer. In Advisory Opinion No. 90-003 the Ethics Commission addressed the issue of a public official donating goods, services, or money to the political subdivision with which he serves in light of the prohibition of R.C. 2921.42 (A)(4), holding:

A donation of goods or services . . . by a public official to the political subdivision with which he serves would not result in the public official receiving any pecuniary gain, absent facts indicating otherwise. Therefore, **a public official who donates goods, services, or money to the political subdivision with which he serves would not be considered to have an interest in a public contract with his own political subdivision, provided that he does not receive any pecuniary gain from the donation.** (Emphasis added.)

See also Advisory Opinion No. 91-001.

The issue becomes whether the city council member who serves the city fire department as an unpaid volunteer paramedic receives any pecuniary gain from: (1) being able to keep his paramedic certification; (2) being covered under Ohio Worker's compensation; or, (3) being covered by the city's liability insurance. Again, such gain or benefit must be definite and direct in nature. See Advisory Opinion No. 81-008.

You have stated that by serving the fire department as an unpaid volunteer paramedic the city council member will be able to maintain his paramedic certification. See R.C. 3303.15 (B) and 3303.16. If the city council member maintains his paramedic certification, he would not be prohibited from receiving compensation for performing paramedic services. See R.C. 3303.22 (B) (a person must be certified in order to represent himself as a paramedic). See also R.C. 3303.99 (a person who represents himself to be a paramedic without the required certification is subject to a criminal penalty). However, the mere possibility that the city council member, having maintained his certification, may at some time be employed as a paramedic and receive some pecuniary benefit from such employment is speculative and intangible; it is not a definite and direct pecuniary interest for purposes of R.C. 2921.42.

It is next necessary to determine whether the council member would receive a definite and direct pecuniary benefit from his coverage by Ohio workers' compensation. Each municipal corporation is defined as an "employer" for purposes of the Ohio workers' compensation system. See R.C. 4123.01 (B). Every person in the service of any municipal corporation, including a regular member of a lawfully constituted fire department, whether paid or volunteer, falls within the statutory definition of "employee", "workman", or "operative" for purposes of Ohio's worker's compensation coverage. See R.C. 4123.01 (A)(1)(a). Also, a municipality may contract with the Bureau of Workers' Compensation for coverage on persons in its service, including volunteer firemen, who do not qualify as "employees" for purposes of R.C. Chapter 4123. See R.C. 4123.03.

The Ohio workers' compensation system has been described as a trade-off, which the General Assembly has deemed to be beneficial to both employers and employees, and which substitutes the rights and duties that existed between employers and employees at common law. See Couch v. Thomas, 26 Ohio App. 3d 55 (Butler County 1985). The workers' compensation

system provides partial reimbursement for the impairment of an injured worker's earning capacity on the theory that partial reimbursement without expense, delay, or litigation is more desirable than the opportunity of full compensation with the expenses, delays, and risks, of litigation. See Industrial Comm'n v. Drake 103 Ohio St. 628 (1921).

In the instant situation, the Ohio workers' compensation coverage for the city council member who serves as an unpaid volunteer paramedic with the city's fire department protects the city from liability for injuries that the city council member may sustain performing paramedic services. See generally Blankenship v. Cincinnati Milacron Chemicals, Inc. 69 Ohio St. 2d 608 (1982). The worker's compensation coverage also provides a guarantee of compensation to the city council member for injuries received while serving as an unpaid volunteer with the city fire department. However, any benefit that the council member might receive from workers' compensation coverage is speculative and intangible; it is not a definite and direct pecuniary interest for purposes of R.C. 2921.42. See also 1980 Ohio Op. Att'y Gen. No. 80-002 (a public employer's contribution to the workers' compensation fund made on behalf of a public officer does not constitute compensation for the public officer for purposes of the Ohio Constitution's prohibition against in-term increases in compensation).

The issue remains whether the city council member would derive a personal pecuniary benefit as a result of being covered by the city's liability insurance. An employee of a political subdivision, including an officer, agent, employee, or servant, whether or not compensated, or full or part time, who is authorized to act for a political subdivision, see R.C. 2744.01 (B), is not personally liable for acts performed within his scope of employment or official responsibilities so long as he was acting within the scope of his employment and so long as his acts or omissions were not malicious, in bad faith, or in a wanton and reckless manner. R.C. 2744.03 (A)(6). Also, no paramedic is liable in civil damages for injury, death, or loss to persons or property resulting from his administration of emergency medical care or treatment absent willful or wanton misconduct. See R.C. 3303.21 (A). Furthermore, R.C. 2305.23, the "Good Samaritan" statute, provides that no person is liable in civil damages for administering emergency care at the scene of an emergency unless such acts constitute willful or wanton misconduct. See 1979 Ohio Op. Att'y Gen. No. 79-050 (R.C. 2305.23 applies to a volunteer firefighter whose duty is to render emergency medical care).

Generally, a political subdivision is not civilly liable for any act or omission of the political subdivision or its employees. R.C. 2744.021 (A)(1) and 3303.01 (B) state that no political subdivision is liable in civil damages for injury, death, or loss to persons or property resulting from the administration of emergency medical care or treatment arising out of any actions taken by a paramedic absent willful or wanton misconduct. R.C. 2744.02 (B) provides exceptions to the general grant of immunity under Division (A), one of which states that political subdivisions are liable for loss caused by the negligent operation of motor vehicles by their employees. R.C. 2744.02 (B)(1)(b) and (c) provide a defense for a civil action for damages against a political subdivision for injuries, death, or property loss caused by members of the municipal fire department or emergency medical service operating a motor vehicle in answering an emergency call when such action does not involve willful or wanton misconduct. See King v. Williams, 5 Ohio St. 3d 137 (1983) (describing the immunity from liability available to municipalities and fire department personnel under a former provision of the Revised Code, R.C.

701.02). See also Schroeder v. Moore, 15 Ohio App. 3d 40 (Allen County 1984) (the word "fireman" as used in R.C. 701.02 includes volunteer as well as paid firefighters).

A political subdivision may procure liability insurance for its officers or employees for injuries, death, or property loss arising out of the operation of vehicles while engaged in the course of their official responsibilities. See R.C. 9.83. See also 1967 Ohio Op. Att'y Gen. No. 67-077 (a board of township trustees may purchase liability insurance for volunteer firemen who operate their personal automobiles on behalf of the township). A political subdivision is provided with statutory authorization to use public funds to secure insurance with respect to its and its employees' potential liability in civil actions caused by acts or omissions of the political subdivision or its employees. R.C. 2744.08.

In the instant situation, the city has procured insurance which protects it and members of its fire department personally from liability for acts and omissions incurred in the performance of the fire department personnel's official duties. You have stated that the individual in question would be covered by the insurance policy in his capacity as a volunteer paramedic. It is apparent that the city's purchase of liability insurance provides protection for both the city council member who is serving as an unpaid volunteer paramedic and the city. However, any benefit which the city council member might receive from liability insurance coverage is, again, only speculative and intangible; it is not a definite and direct pecuniary interest for purposes of R.C. 2921.42. See also 1980 Ohio Op. Att'y Gen. No. 80-002 (a public employer's purchase of liability insurance to protect a public officer from liability for official acts does not constitute compensation for the public official for purposes of the Ohio Constitution's prohibition against in-term increases in compensation).

Therefore, R.C. 2921.42 (A)(4) does not prohibit the council member from serving the city's fire department as an unpaid volunteer paramedic even if he is able to maintain his paramedic certification, is covered by Ohio workers' compensation, and is fully insured under the city's liability insurance policy. (However, the city council member is still subject to the prohibition of R.C. Section 102.03, as described below.) See generally Advisory Opinion No. 88-002. See also Ohio Op. Att'y Gen. No. 86-059 and 87-084.

The city council member is, however, also subject to Division (E) of Section 102.03 of the Revised Code which provides:

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.

A "public official or employee" is defined for purposes of R.C. Section 102.03 to include any person who is elected or appointed to an office of a city, and thus includes a member of city council. See R.C. 102.01 (B) and (C). A member of city council is, therefore, subject to the prohibition of R.C. 102.03 (E). See Advisory Opinion No. 90-008.

The term "anything of value" is defined for purposes of R.C. 102.03 in R.C. 1.03 to include money, the promise of future employment, and every other thing of value. See R.C.

102.03 (G). A definite and direct pecuniary benefit is considered to be a thing of value under R.C. 102.03 (E). See Advisory Opinions No. 88-004 and 89-005.

R.C. 102.03 (E) prohibits a public official or employee from soliciting or accepting anything of value if the thing of value could manifest a substantial and improper influence upon him with respect to his duties. See Advisory Opinion No. 87-008 (R.C. 102.03 (E) prohibits a member of a board of education from soliciting employment from the board upon which he serves). See also R.C. 2921.42 (A)(4) described above. The application of R.C. 102.03 (E) is dependent upon the facts and circumstances of each individual situation. See Advisory Opinion No. 90-004.

As stated above, the council member desires to serve the fire department as an unpaid volunteer paramedic. The Ethics Commission has held that a position which is uncompensated except for the payment of reasonable expenses is not a "thing of value" for purposes of R.C. 102.03. See Advisory Opinions No. 88-002 and 91-001. Further, the fact that the council member would be able to maintain his paramedic certification, and the workers' compensation and insurance coverage are not, as discussed above, definite and direct pecuniary benefits. Therefore, R.C. 102.03 (E) does not prohibit a city council member from soliciting or accepting a position as an unpaid volunteer paramedic with the fire department of the city with which he serves since, in such an instance, the city council member would not be soliciting or accepting "anything of value" for himself.

The city council member is also subject to Division (D) of Section 102.03 of the Revised Code. R.C. 102.03 (D) is relevant in determining your question whether a city council member who serves the city fire department as an unpaid volunteer paramedic may serve on the city council's safety committee. R.C. 102.03 (D) states:

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 character as to manifest a substantial and improper influence upon him with respect to his duties.

R.C. 102.03 (D) prohibits a public official or employee from using the authority or influence of his office to secure anything of value if the thing of value could manifest a substantial and improper influence upon him with respect to his duties.

Division (D) of Section 102.03 does not require that the thing of value be secured for the public official or employee himself. See Advisory Opinion No. 88-004. The Ethics Commission has held that R.C. 102.03 (D) prohibits a public official or employee from using the authority or influence of his office to secure anything of value for a party if that party's relationship with the official or employee could impair the official's or employee's objectivity and independence of judgment in performing his official duties. See Advisory Opinions No. 88-004, 88-005, 89-008, 90-002, and 90-011.

As explained above, the city council member would not secure anything of value for himself by serving as an unpaid volunteer paramedic for his city's fire department. However, city

council is empowered to decide matters which directly affect the operations of the fire department and the pecuniary interests of fire department personnel. The legislative authority of a city may establish a city fire department. See R.C. 737.21. A municipality may also contract with a private fire company to provide fire fighting services for the municipality. See R.C. 9.60 (C). The legislative authority of a city may enact ordinances which provide for the composition of personnel and control of the city's fire department. See R.C. 715.05 and 737.08. A municipality may, through action of its legislative authority, contract to provide fire protection services to other political subdivisions. See R.C. 9.60 (B). See also R.C. 505.37 (B) and 505.371 (authorizing a board of township trustees and the legislative authority of a municipality to jointly purchase, maintain, use, and operate firefighting equipment and create a joint fire district, respectively).

In the instant situation, the relationship between a city council member and the fire department which he serves as an unpaid volunteer paramedic would be such that the council member could be subject to an impairment of his objectivity and independence of judgment in deciding, as a council member, matters relevant to the city fire department. The impairment of the city council member's objectivity and independence of judgment could be exacerbated by his previous service on the fire department and his previous membership in the firefighters' association. Therefore, R.C. 102.03 (D) prohibits a city council member who serves as an unpaid volunteer paramedic from voting, deliberating, participating in discussions, or otherwise using the authority or influence of his office, either formally or informally, with regard to matters affecting the city fire department and its personnel. Cf. Advisory Opinion No. 88-002 (the deputy director of the Office of Budget and Management who serves as the President of the Controlling Board would be prohibited from approving contracts in which the state university where he teaches has an interest even though he receives no compensation from the university).

You have asked whether the council member may continue to serve as the chairman of the council's safety committee. As stated above, R.C. 102.03 (D) prohibits the city council member from voting, deliberating, participating in discussions, or otherwise using the authority or influence of his office, either formally or informally, with regard to matters relevant to the city fire department and its personnel. R.C. 102.03 would not prohibit the council member from serving as the chairman of the safety committee; however, since a portion of the duties of the city council's safety committee concern matters relevant to the fire department, the city council member would be unable to participate as a member of council and as the chairman of the council's safety committee in matters relevant to the city fire department and its personnel while serving the city fire department as an unpaid paramedic.

Also, R.C. 102.03 (B) prohibits the city council member from disclosing confidential information to the fire department employees, or any other party, and from using such confidential information, without appropriate authorization. See Advisory Opinion No. 88-009. No time limitation exists for this prohibition and it is effective while the council member serves in office and after he leaves office. Id.

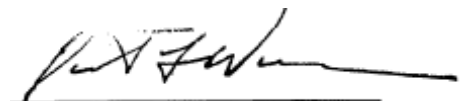
It is possible that the city council member may wish to seek employment with the city fire department after his term of office on city council expires. R.C. 102.03 (D) and (E) prohibit the city council member, while he serves on council, from soliciting, or using the authority or

influence of his office to secure, compensated employment with the fire department even if his employment with the fire department would commence after his term as council member ended. See Advisory Opinion No. 87-008. Also, R.C. 2921.42 (A)(3) and R.C. 102.03 (A) impose post-employment restrictions upon former public officials and may be implicated if the council member seeks employment with the fire department. See generally Advisory Opinion No. 87-008. The Ethics Commission should be consulted for a determination of how these post-employment provisions will apply to the council member in the event that he desires to seek such employment after his term of office on city council expires.

As a final matter, it must be noted that the Ethics Commission, in Advisory Opinion No. 75-030, held that a city council member was not prohibited from receiving compensation for his services as a volunteer firefighter of the city with which he served. Amendments to the Ethics Law which were made subsequent to the rendering of Advisory Opinion No. 75-030 have materially altered the provisions of the statutes interpreted in that opinion and added statutes to the Commission's advisory jurisdiction which are relevant to the issue but could not be addressed by the Commission in 1975. See Am. H.B. 1040 111th Gen. A. (1976) (eff. August 26, 1976), Am. S.B. 425 113th Gen. A. (1980) (eff. October 20, 1980), Am. Sub. H.B. 300, 116th Gen. A. (1986) (eff. September 17, 1986). R.C. 2921.42 would now prohibit an elected officer of a political subdivision from simultaneously holding compensated employment with his own political subdivision and therefore, this opinion expressly overrules Advisory Opinion No. 75-030. Cf. Advisory Opinion No. 91-001 (an exemption provided by R.C. 505.011 enables a township trustee to serve as a paid member of a private fire company under contract to provide fire protection services for the trustee's township; however, the Ethics Law prohibits the trustee from participating in matters involving the fire company).

This advisory opinion is based on the facts presented and is rendered only with regard to questions arising under Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code.

Therefore, it is the opinion of the Ethics Commission and you are so advised, that: (1) This advisory opinion overrules Advisory Opinion No. 75-030 due to legislative amendment; (2) Division (A)(4) of Section 2921.42 of the Revised Code and Division (E) of Section 102.03 of the Revised Code do not prohibit a city council member from serving as an unpaid volunteer paramedic with the fire department of the city, provided he receives no definite and direct personal pecuniary benefit from such service; and, (3) Division (D) of Section 102.03 of the Revised Code prohibits a city council member who serves as an unpaid volunteer paramedic with the fire department of the city from voting, deliberating, participating in discussions, or otherwise using the authority or influence of his office, either formally or informally, with regard to matters affecting the fire department and its personnel.


Dr. David L. Warren, Chairman
Ohio Ethics Commission