



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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Advisory Opinion Number 92-010
May 22, 1992

Syllabus by the Commission:

(1) The Ohio Ethics Law and related statutes do not, per se, prohibit a husband and wife from serving as elected office holders, in the positions of trustee and clerk, in the same township;

(2) Division (D) of Section 102.03 of the Revised Code prohibits a township trustee and township clerk, who are married to one another, from voting, deliberating, participating in discussions, or otherwise taking action or using the authority or influence of their office, formally or informally, in any matter which would provide a direct and definite, private pecuniary benefit to their spouse, where their objectivity and independence of judgment in the performance of their official duties could be impaired;

(3) Division (D) of Section 102.03 of the Revised Code does not prohibit a township clerk or a township trustee, who are married to one another, from performing their official duties regarding the statutorily mandated compensation to which their spouse is entitled, since neither the clerk nor the board of trustees is empowered to exercise any discretion with regard to this statutorily mandated compensation;

(4) Division (D) of Section 102.03 of the Revised Code prohibits a township trustee who is married to the township clerk from voting, deliberating, participating in discussions or otherwise taking action or using the authority or influence of his office, formally or informally, in any matter where the board of trustees exercises discretion as to the amount of compensation the clerk is entitled to receive or otherwise has the authority to act to affect the clerk's compensation;

(5) Division (D) of Section 102.03 of the Revised Code does not prohibit a township trustee, who is married to the township clerk, from voting, deliberating, participating in discussions or otherwise taking action or using the authority or influence of his office, formally or informally, to provide or fund health benefits under R.C. 505.60, which requires the board of trustees to provide uniform health coverage to all township officers and full-time employees if the board elects to provide health care benefits.

* * * * *

You have asked if the Ohio Ethics Law and related statutes prohibit two family members from serving in elected positions within the same township. Specifically, you have explained that

the individuals in your question are a township clerk, elected in the November election, who is married to a township trustee, re-elected in the November election.

It must first be noted that the Ohio Ethics Law and related statutes do not, per se, prohibit members of the same family from simultaneously serving as elected officials within the same township. See generally Ohio Ethics Commission Advisory Opinion No. 90-004. See also Advisory Opinion No. 91-004. However, the Ethics Law and related statutes do impose limits upon the actions which can be taken by both the township trustee and the township clerk.

Division (D) of Section 102.03 of the Revised Code, which is relevant to the question you have asked, provides as follows:

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.

The term "public official or employee" is defined to include any person who is elected or appointed to an office of any township. See R.C. 102.01 (B) and (C). A township trustee and a township clerk are both elected officers of the township. R.C. 505.01 and 507.01. Therefore, both a township trustee and a township clerk are subject to the prohibition of R.C. 102.03 (D). See Advisory Opinion No. 91-001.

The term "anything of value" is defined for purposes of R.C. 102.03 in R.C. 1.03 to include money and every other thing of value. See R.C. 102.01 (G). A definite, pecuniary benefit is considered to fall within the definition of "anything of value" for purposes of R.C. 102.03. See Advisory Opinions No. 79-008, 85-006, 88-004, and 89-002.

The Ethics Commission has held that a public official is prohibited by R.C. 102.03 (D) from participating in any matter, including any matter providing a personal, pecuniary benefit to his spouse, where the official's objectivity and independence of judgment in the performance of his official duties could be impaired. See Advisory Opinions No. 88-004, 88-005, 89-005, 89-008, 90-004, 91-001, and 91-004. Therefore, both the township clerk and the township trustee are prohibited from voting, deliberating, participating in discussions, or otherwise taking action or using the authority or influence of their office, formally or informally, in any matter which would provide a direct and definite, private pecuniary benefit to their spouse, where their objectivity and independence of judgment could be impaired. See Advisory Opinions No. 90-004 and 91-004.

The application of R.C. 102.03 (D) to the facts you have presented must focus first on the compensation of township trustees and the township clerk, and the process of payment therefor. It is necessary to examine first the method of compensation of the trustee and the clerk, and then the duties of both the township trustee and township clerk with regard to expenditures of township funds for the salaries of township officials.

Compensation of township trustees and clerks is set pursuant to R.C. 505.24 and 507.09, respectively. R.C. 505.24 (B) provides that each township trustee is entitled to receive compensation, at a fixed per diem amount which is based upon the annual budget of the township, for each day of service he spends in the business of the township up to two hundred days annually. R.C. 505.24 (B) further empowers the township trustees to unanimously vote to adopt a method of compensation consisting of an annual salary to be paid in equal monthly payments. The amount of the annual salary cannot exceed the maximum amount that could be received annually by a trustee if he were paid on a per diem basis. The township trustees paid on a per diem basis must notify the clerk of the days spent in township service, and the type of service performed, on a periodic basis. R.C. 505.24 and 505.25. Trustees may also be entitled to compensation in addition to that set forth in R.C. 505.24 (B). See R.C. 505.24 (A) (additional compensation related to partition fences), 505.25 (additional compensation for trustees of townships located on islands), 515.12 (compensation related to lighting), 517.18 (compensation related to cemeteries), and 5571.03 (compensation related to road repair and maintenance).

The township clerk's compensation is established by R.C. 507.09, based upon the budget of the township, and is paid in equal monthly installments. R.C. 507.09 (A) and (C). A township clerk may elect, in writing, to receive less than the compensation he is statutorily allowed. R.C. 507.09 (B). The clerk may also be entitled to compensation under R.C. 505.32, for services relative to garbage disposal, R.C. 515.12, for services related to lighting, and R.C. 517.18, for services related to cemeteries.

The township trustees and the township clerk serve in positions of public trust. See Pistole v. Wiltshire, 22 Ohio Op. 2d 464, 467 (C.P. Scioto County 1961) (a township trustee is responsible to the township electorate) and Ohio Op. Att'y Gen. 87-085 (a township clerk is responsible to the township electorate). The township trustees, and the township clerk, have only those powers conferred by the Ohio Revised Code, or necessarily implied therefrom. See State ex rel. Schramm v. Ayres, 158 Ohio St. 30, 33 (1952); Ohio Op. Att'y Gen. 85-079. The board of township trustees is the governing board of the township. See generally R.C. 505.01. The board of township trustees has numerous duties regarding the operations of the township. See, e.g., R.C. 505.10, 505.26, 505.261, R.C. Chapter 511, R.C. Chapter 517, R.C. Chapter 519. The board is empowered, among other duties, to enter into contracts to purchase goods and services on behalf of the township. See, e.g., R.C. 505.07, 505.08, 5705.41. Chapter 5705. assigns various duties to the board of township trustees, as the taxing authority of the township, relative to tax levies and other budgetary matters. See R.C. 5705.01 (C). See generally R.C. 5705.28 and 5705.29 (preparation of tax budget), R.C. 5705.38 (appropriation measure). R.C. 507.11 requires that all orders to pay out township funds (commonly called warrants), must be signed by at least two trustees. See also R.C. 5705.41(C) (township cannot make an expenditure of money except by proper warrant drawn against an appropriate fund). The clerk is the fiscal officer of the township. See R.C. 5705.01 (D). The clerk is responsible for keeping the accounts and financial records of the township and for handling township funds. See Advisory Opinion No. 92-008. See also Ohio Op. Att'y Gen. 89-022. The clerk's duties are generally set forth in Chapter 507. of the Revised Code. For example, R.C. 507.04 provides that the township clerk shall keep an accurate record of the accounts and transactions of the township trustees. R.C. 507.07 states that the township clerk shall annually make a detailed statement of the receipts and expenditures of the

township for the preceding year. The clerk must countersign all orders (or warrants) to pay out township funds. R.C. 507.11.

The board of township trustees and the clerk have specific duties regarding the expenditure of township funds for the payroll of officers. According to the discussion of township fiscal administration in Ohio Township Law (Banks-Baldwin), the clerk prepares a voucher and warrant (an order by the township on the township's bank to pay the person named as payee) for each payroll expenditure. Ohio Township Law, § T 29.12. See also § T 29.10. The voucher and warrant are presented to the board of township trustees. See Ohio Township Law, § T 29.12. See also § T 29.11. The board authorizes an expenditure by signing the voucher and passing a resolution approving payment. Ohio Township Law, §§ T 29.11 and 29.12. The clerk then presents a warrant to the trustees. Id. If the trustees sign the vouchers and pass a resolution approving payment of the officials' salaries and sign the warrants, the clerk countersigns the warrants. R.C. 507.11. See Ohio Township Law, §§ T 29.11 and 29.12. Section 5705.41 of the Revised Code specifically states that current payrolls for officers and employees are not considered "contracts" of the township, for purposes of the requirements of that section, and therefore do not require the clerk's certification of available funds, certifying that funds required to meet an obligation have been appropriated for that purpose and are either in the township treasury or are in the process of being collected, which is required for other kinds of township purchases. R.C. 5705.41.

With regard to the **township clerk**, R.C. 102.03 (D) prohibits the clerk from participating in any matter which directly affects the private pecuniary interests of her spouse who is a trustee, where the clerk's objectivity and independence of judgment could be impaired. See Advisory Opinions No. 90-004 and 91-004.

In Advisory Opinion No. 90-004, the Commission was asked if a city council member could participate in city council's annual appropriation to the municipal court, in light of the fact that his spouse served as an elected municipal court judge. The Commission first examined the method whereby municipal court judges are compensated. The amount of compensation for municipal court judges is statutorily established, with the funds coming from the county and city where the court is located, and from the state. See R.C. 1901.11 (B) and (C) and 141.04 (A)(5). The Commission then stated:

It is apparent that the municipal court judge receives a definite and direct private pecuniary benefit from the receipt of compensation for the performance of her duties; however, the city has the statutory duty to provide a specific amount set forth by statute as part of this compensation. (Emphasis in original. Citation omitted.) The city council has no discretion to determine the amount of the municipal court judge's compensation. Therefore, the affected city council member's objectivity and independence of judgement could not be impaired by his participation in the city council's annual appropriation to the municipal court on the basis that the judge's compensation is included as a line-item in the appropriation. (Emphasis added.)

Advisory Opinion No. 90-004. See also Advisory Opinions No. 91-007 and 91-008 (because they exercise no discretionary authority with respect to the enactment of legislation, the

appropriation of public funds, or the establishment of compensation for their positions, R.C. 102.03 does not prohibit the clerk of city council, city treasurer, city auditor, or city director of public safety from receiving in-term increases in compensation).

As in the situations described above, the township clerk has no discretion or influence regarding the expenditure of funds for the salary of the trustees. The clerk does not set the compensation of the township trustees, under R.C. 505.24 or otherwise. The clerk does not approve the payment of the trustees' compensation. Although the clerk is required to countersign the warrant for payment of the trustees' compensation once the trustees have approved such payment and signed the warrant, and performs other duties related to the preparation of the voucher and warrant, she has no discretion to determine whether to prepare the voucher or issue or countersign the warrant paying her spouse's compensation. Before the clerk can perform her duties to make payments to any official of the township, the trustees must pass a resolution and sign the voucher ordering her to make the payment. The action of the trustees in authorizing an expenditure and approving payment triggers the expenditure. Generally, the clerk cannot refuse to sign a warrant authorized by the trustees, or to prepare a voucher and warrant for a township expenditure, if the expenditure is within the trustees' authority. The approval and order of the expenditure of township funds to pay the compensation of township officials is within the statutory authority of the board of township trustees, so long as the amount of the expenditure does not exceed the limits set by law. Therefore, the clerk cannot refuse to sign a warrant for the payment of a trustee's compensation, or to perform her other duties relative to the payment, so long as the compensation amount does not exceed the amount set by law. See State ex rel. Noble v. Ellas, No. CA-3507 (Licking County App. Ct. 1990), juris. motion overruled mem., 57 Ohio St. 3d 714 (1991) [hereinafter Noble v. Ellas].

The clerk has a duty to prepare and sign warrants for the amount to which the trustee is statutorily entitled even if the trustees have not appropriated sufficient funds to cover the entitlement. See Noble v. Ellas at 12. Unlike any other type of township expenditure, the clerk is not required to complete a certificate of availability of funds for payroll, including the wages of township officers. R.C. 5705.41. See also Noble v. Ellas at 12. The clerk is required to sign a warrant to make any payment which is authorized and approved by the township trustees in order to validate the warrant. The clerk has no discretion in performing this task. Compare Advisory Opinion No. 92-008 (the clerk exercises discretionary authority, pursuant to the Uniform Depository Act, regarding the deposit of township funds).

As stated above, R.C. 102.03 (D) prohibits a township clerk from participating in any matter which directly affects the private pecuniary interests of her spouse who is a trustee where the clerk's objectivity and independence of judgment could be impaired. There are some acts performed by public officials and employees which do not require the exercise of their objectivity and independence of judgment. The duties of a township clerk have been described as "largely ministerial." Ohio Op. Att'y Gen. 87-085. But see Advisory Opinion No. 92-008 (some of a township clerk's duties regarding township deposits are not ministerial). The counter-signature of the clerk, affixed to a warrant for the payment of an official's statutorily mandated compensation, after payment of the compensation has been approved by the township trustees, and any other duties relative to the preparation of the warrant, are functions performed by the clerk without decision-making authority or discretion. In fact, the clerk must perform these same

duties for the payment of her own compensation. The clerk can be compelled, through a writ of mandamus, to pay the compensation of a trustee if the right to relief is clear and the amount owed is fixed with certainty. See Noble v. Ellas at 12. In State ex rel. Noble v. Ellas, a former township trustee filed a petition for writ of mandamus compelling the clerk of the township to pay him per diem compensation for days he worked as a trustee. The clerk had refused to pay the amount requested by the trustee, even though the amount was within the statutorily permitted amount, because the other two trustees had passed a resolution limiting the trustees' compensation, and had appropriated only enough money to cover the lower rate. The Licking County Court of Appeals held as follows:

[The former trustee] has a clear legal right to the claimed compensation under R.C. 505.24, as discussed earlier. [The clerk] therefore had a clear legal duty to pay the amount claimed. The amount to which [the trustee] is entitled is established with certainty by applying the statute, as the resolution limiting compensation is void. Mandamus is therefore the appropriate remedy. Noble v. Ellas at 12.

The clerk's preparation of a voucher and warrant for the payment of a trustee's compensation, for an amount fixed by statute and, in the case of an annual salary, by the board of trustees, does not involve the clerk's personal judgment. Accordingly, R.C. 102.03 (D) does not prohibit the township clerk from preparing the voucher and warrant for the payment of her spouse, the township trustee, or from countersigning the warrant for his compensation.

As discussed above, township trustees are entitled to a fixed amount of money for each day of service spent in the business of the township, up to two hundred days per year; the per diem rate of compensation is based upon the township's budget. However, by unanimous vote, the board of township trustees may receive an annual salary, to be paid in equal monthly payments. R.C. 505.24 states, "[t]he amount of the annual salary approved by the board shall be no more than the maximum amount that could be received annually by a trustee if he were paid on a per diem basis." (Emphasis added.) The only situation where the clerk would be able to secure anything of value for her husband, and where her judgment could be impaired, would be where her spouse or the trustees attempted to secure compensation in excess of that provided by statute, and, if the trustees are paid an annual salary, where they otherwise exceeded their authority by attempting to secure compensation greater than that approved by the board of trustees. In and of itself, this possibility is too remote to prohibit an individual who is married to a township trustee from serving as township clerk. However, if her spouse or the trustees acted to secure compensation in excess of the statutory limit, or in excess of the amount set by the board, they would be exceeding their statutory authority; and, if the clerk prepared vouchers and warrants, and signed warrants, for any of the trustees at an increased or unapproved compensation level, she would also be exceeding her statutory authority. The clerk is therefore prohibited, by R.C. 102.03 (D), from processing vouchers and signing warrants for her husband's compensation in amounts which exceed the statutory rate, or the rate approved by the board of trustees. Any compensation in excess of the statutory or approved amount would be "of such a character as to manifest a substantial and improper influence upon" the clerk in the performance of her duties. R.C. 102.03 (D). The clerk has no discretion with respect to the payment of her spouse or the amount her spouse, as township trustee, should be compensated, so long as the amount does not exceed the statutory amount, and, where the trustees establish an annual salary,

does not exceed the amount set by the trustees. However, once the compensation to be paid to her husband exceeds the proper amount, it is of an improper character. Accordingly, if her spouse or the township trustees attempt to secure compensation in excess of the statutorily provided and properly approved compensation, the township clerk is prohibited, by R.C. 102.03 (D), from preparing vouchers and warrants, and countersigning warrants, for the compensation of her husband at the excessive rate.

With regard to the **township trustee**, R.C. 102.03 (D) prohibits the trustee from participating in any matter before the board of township trustees which directly affects the personal pecuniary interests of his wife, the clerk, and which could impair the objectivity and independence of judgment of the trustee. See Advisory Opinions No. 90-004 and 91-004. Therefore, the trustee may not participate in matters affecting the clerk's compensation or benefits, or any other matter in which the clerk has a direct and definite private pecuniary interest, where the trustee's objectivity and independence of judgment could be impaired. Furthermore, the trustee is prohibited from using the authority or influence of his office, formally or informally, to influence the decisions or actions of other township officials or township employees in matters which would affect the personal, pecuniary interests of the clerk.

The board of township trustees is not the appointing authority for the township clerk, who is an independently elected office holder. See R.C. 507.01. The board of trustees has no authority to remove the clerk from office. As set forth above, the actual amount of compensation to which the clerk is entitled is generally set by statute. R.C. 507.09. The trustee has no authority or influence, generally, to set or vary the amount of the clerk's compensation set forth in R.C. 507.09. However, the trustees have the authority to fix the clerk's compensation relative to township garbage disposal. R.C. 505.32. The clerk may also receive compensation for services related to lighting, and, while the board of township trustees cannot set the compensation, the board can employ personnel to perform the lighting duties in place of the clerk. See R.C. 515.12. The clerk may receive compensation pursuant to R.C. 517.18, for her duties involving township cemeteries; it does not appear that the board of trustees has the authority to set or control the compensation the clerk may receive. R.C. 517.18.

As described above, the board of township trustees is required to pass a resolution approving the payment of payroll vouchers and to sign the vouchers. The warrant must also be signed by at least two township trustees. R.C. 507.11. The board of township trustees does not have discretion with regard to the payment of the clerk's compensation set by R.C. 507.09 or where it is otherwise fixed by statute. The trustees' approval of a voucher and warrant to pay the clerk's statutorily mandated compensation, the signatures of trustees, affixed to the voucher or warrant for the payment of an official's statutory compensation, and any other duties relative to the preparation or approval of the voucher or warrant, are functions performed by the trustees without decision-making authority or discretion. Therefore, R.C. 102.03 (D) would not prohibit the township trustee from participating to pass the resolution approving the payment of his spouse's statutorily set wages, and from signing the voucher or the warrant. See generally State ex rel. Noble v. Ellas, No. CA-3507 (Licking County App. Ct. 1990), juris. motion overruled mem., 57 Ohio St. 3d 714 (1991).

However, the trustees do have discretion to set the compensation of the clerk relative to duties involving garbage disposal; and to employ personnel to perform the lighting duties in place of the clerk, thereby depriving the clerk of compensation for these duties. See R.C. 505.32 and 515.12. Accordingly, R.C. 102.03 (D) would prohibit the trustee from participating in any matter relative to the clerk's compensation for duties pertaining to waste disposal, and from taking any part in the deliberations or decisions of the township concerning employing additional township personnel to perform duties for which the clerk could otherwise receive compensation. See R.C. 505.32, 515.12. Cf. Advisory Opinion No. 91-001 (a township trustee is prohibited, by R.C. 102.03 (D), from signing a warrant or check to his outside private employer because the relationship between a public official and his outside private employer is such that the individual's objectivity and independence of judgment could be impaired with regard to matters which affect his employer). The township trustee is prohibited, by R.C. 102.03 (D), from voting, deliberating, participating in discussions or otherwise taking action or using the authority or influence of his office, formally or informally, in any matter where the board of trustees exercises discretion as to the amount of compensation the clerk is entitled to receive, or otherwise has the authority to act to affect the clerk's compensation.

As stated above, the trustee must abstain from voting, discussing, deliberating, or formally or informally using his authority or influence, with regard to any matter in which the clerk has a definite and direct private pecuniary interest, including matters affecting the clerk's compensation or benefits, where the trustee's objectivity and independence of judgment could be impaired with respect to performing his official duties. R.C. 505.60(A) empowers the board of trustees to provide all or part of a uniform group health insurance plan or health services for all township officers and full-time employees of the township and their immediate dependents. R.C. 505.60 (A) requires that if the board elects to provide health care benefits to any township officers or employees, it must provide uniform coverage to all township officers and full-time employees, and to their immediate dependents. In the situation you have described, if the board of trustees decides to provide health coverage to township employees and officers, the board must, pursuant to R.C. 505.60, provide coverage to the clerk. If the board of trustees decides to provide health coverage to the clerk, it must provide coverage to all township officers and full-time employees at a uniform level. Since the township trustees are statutorily required to provide uniform health benefits to all officers and full-time employees if they choose to provide health benefits at all, the fact that the trustee's spouse would benefit, in common with all other officers and full-time employees, including the trustees themselves, see Ohio Op. Att'y Gen. 84-086 and Ohio Op. Att'y Gen. 90-064, would not be sufficient to impair the objectivity and impartiality of judgment of the trustee. Cf. Advisory Opinions No. 82-003 and 89-005. Therefore, because the township clerk's benefit from a health plan adopted pursuant to R.C. 505.60 (A), which is identical to the benefit received by all other officers and full-time employees, is not of such a character as to impair the township trustee's objectivity and independence of judgment, R.C. 102.03 (D) does not prohibit the township trustee from voting or participating to approve a township health plan.

In Advisory Opinion No. 90-004, the Ethics Commission was asked if a member of city council, whose spouse was a municipal court judge, could vote on an appropriation measure to fund the health benefits provided by the city to municipal employees. The judge was included within a class of city officers and employees who were eligible to receive health care benefits

through the city without paying a contribution, although the city council member could not participate unless he purchased coverage. The Commission stated: "The approval of a general appropriation to fund uniform health care benefits currently being provided to city officers and employees differs considerably from a decision by the city council to provide benefits to an individual employee or a class of employee who are not currently receiving or eligible for such benefits." However, the situation which would arise if the township trustees provided health benefits to township officers and employees pursuant to R.C. 505.60 can be distinguished from the situation present in Advisory Opinion No. 90-004. There is no indication, from the facts set forth in Advisory Opinion No. 90-004, that, at the time that opinion was rendered, city council was required to provide health insurance to the judge if it provided health insurance to city employees, or was required to provide health insurance to all city employees, if it provided health insurance to the judge. But see R.C. 1901.111 (eff. 5/6/92) (requiring that the legislative authority of a municipal court shall provide health benefits for municipal court judges and their spouses and dependents, and, if possible, shall provide the benefits through the plan under which the legislative authority's employees receive group health benefits). In the situation you described, however, the board of township trustees must provide health benefits on a uniform basis to all officers and employees if it chooses to provide the benefits to any officer or employee.

R.C. 505.60(B) states that the board of trustees may provide group life insurance to insure the lives of officers and full-time employees. It also states that "[t]he amount of group life insurance coverage provided by the board to insure the lives of officers of the township shall not exceed fifty thousand dollars per officer." Again, it does not appear that the clerk could gain special advantage or benefit from group life insurance provided by the board of trustees. The independence of judgment of her spouse, as township trustee, in providing group life insurance to township officers and employees could not be impaired, and the trustee would not be prohibited from participating to provide group life insurance to officers and employees of the township, so long as the clerk would not receive a special or particular benefit.

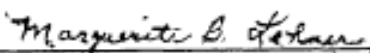
Further with regard to appropriations, the Ethics Commission has held that R.C. 102.03 (D) does not prohibit a public official from participating in general budgetary appropriations to the office which a family member holds if the appropriations do not provide a definite and particular personal benefit to the public official's family member, but are for general accommodations, supplies, and operating expenses. See Advisory Opinion No. 90-004. Also, the trustee is not prohibited from participating in a general budgetary appropriation which includes money to fund the clerk's compensation and benefits, including the insurance plans, since the clerk's compensation and benefits are set independently of the appropriation. See generally Advisory Opinion No. 90-004 (a city council member whose spouse served as a municipal court judge was not prohibited, by R.C. 102.03 (D), from voting to approve an appropriation which would fund a health insurance plan because his spouse would not receive a definite and particular benefit from the appropriation to pay for health insurance where the decision to provide health insurance has already been made).

It should be noted that the application of R.C. 102.03 (D) is dependent upon the facts and circumstances of each situation. See Advisory Opinion No. 87-008. The findings of this opinion do not apply to the positions held by, or the payment of wages to, individuals other than elected

officials whose compensation is set statutorily, and do not apply to the payment of other township contracts or purchases. See Ohio Op. Att'y Gen. No. 90-040. It should also be noted that Revised Code Section 2921.42 (A)(1) generally prohibits a public official from authorizing a public contract if a member of his or her family has an interest in the contract. Therefore, the Commission has stated that R.C. 2921.42 (A)(1) prohibits a public official from using his or her position in any way to secure an employment contract, or contract benefits, for the public official's spouse. See Advisory Opinions No. 85-003, 85-015, and 90-010. However, the question you have asked can be distinguished from these situations, because both a township trustee and a township clerk are elected officials. Neither the township clerk nor the township trustee serves the township as a result of an employment contract. Therefore, the prohibitions contained in R.C. 2921.42 (A)(1) do not apply to the situation you have described in your question, and need not be analyzed. See Advisory Opinion No. 83-008.

This advisory opinion is based on the facts presented. It 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 opinion of the Ohio Ethics Commission, and you are so advised, that: (1) The Ohio Ethics Law and related statutes do not, per se, prohibit a husband and wife from serving as elected office holders, in the positions of trustee and clerk, in the same township; (2) Division (D) of Section 102.03 of the Revised Code prohibits a township trustee and township clerk, who are married to one another, from voting, deliberating, participating in discussions, or otherwise taking action or using the authority or influence of their office, formally or informally, in any matter which would provide a direct and definite, private pecuniary benefit to their spouse, where their objectivity and independence of judgment in the performance of their official duties could be impaired; (3) Division (D) of Section 102.03 of the Revised Code does not prohibit a township clerk or a township trustee, who are married to one another, from performing their official duties regarding the statutorily mandated compensation to which their spouse is entitled, since neither the clerk nor the board of trustees is empowered to exercise any discretion with regard to this statutorily mandated compensation; (4) Division (D) of Section 102.03 of the Revised Code prohibits a township trustee who is married to the township clerk from voting, deliberating, participating in discussions or otherwise taking action or using the authority or influence of his office, formally or informally, in any matter where the board of trustees exercises discretion as to the amount of compensation the clerk is entitled to receive or otherwise has the authority to act to affect the clerk's compensation; and (5) Division (D) of Section 102.03 of the Revised Code does not prohibit a township trustee, who is married to the township clerk, from voting, deliberating, participating in discussions or otherwise taking action or using the authority or influence of his office, formally or informally, to provide or fund health benefits under R.C. 505.60, which requires the board of trustees to provide uniform health coverage to all township officers and full-time employees if the board elects to provide health care benefits.



Marguerite B. Lehner, Chair
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