



OHIO ETHICS COMMISSION

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Note from the Ohio Ethics Commission:

Ohio Ethics Commission Advisory Opinion No. 93-007 – determination that R.C. 102.03(D) prohibited Ohio Tuition Trust Authority members, who also invest in college savings programs, from participating in any way with respect to any matter before the Ohio Tuition Trust Authority that would have a definite and particular effect on their financial interests or the interests of their beneficiaries under the program.

Reconsidered by [Advisory Opinion No. 2001-06](#), which reverses the application of the holding and allows a member of the Ohio Tuition Trust Authority, who invests in a college savings program, to participate in decisions such as setting the purchase price for tuition credits because such matters result in a general, uniform benefit or detriment to all investors in the college savings program.

For more information on Overruled and Obsolete Formal Advisory Opinions please see [Formal Advisory Opinions - OEC \(ohio.gov\)](#).

THIS COVER SHEET IS PROVIDED FOR INFORMATION PURPOSES. IT IS NOT AN
ETHICS COMMISSION ADVISORY OPINION. ADVISORY OPINION NO. 93-007 IS
ATTACHED.



OHIO ETHICS COMMISSION

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Advisory Opinion Number 93-007
April 2, 1993

Syllabus by the Commission:

- (1) The Ohio Ethics Law and related statutes do not, per se, prohibit an individual who participates in the Ohio Prepaid Tuition Program from serving as a member of the Ohio Tuition Trust Authority;
- (2) Tuition payment contracts entered into pursuant to Section 3334.09 of the Revised Code are not "public contracts" for purposes of Division (F) of Section 2921.42 of the Revised Code;
- (3) Division (D) of Section 102.03 of the Revised Code prohibits a member of the Ohio Tuition Trust Authority, who also participates in the Ohio Prepaid Tuition Program, from voting, discussing, deliberating, formally or informally lobbying, or otherwise using the authority or influence of his position in any way with respect to any matter that would have a definite and particular effect on his financial interests or the interests of his beneficiaries under the program;
- (4) Division (D) of Section 102.03 of the Revised Code does not prohibit a member of the Ohio Tuition Trust Authority, who also participates in the Ohio Prepaid Tuition Program, from voting or otherwise participating in any official matters that would not have a definite and particular effect on his financial interests or the interests of his beneficiaries under the program.

* * * * *

You have asked if there are any restrictions under the Ohio Ethics Law and related statutes which are applicable to an individual who has been appointed to the Ohio Tuition Trust Authority and also participates in the State's College Savings Program.

By way of history, the General Assembly created Ohio's College Savings Program effective in 1990. R.C. 3334.02. The College Savings Program allows citizens to purchase college savings bonds, tuition credits, and supplemental tuition credits on behalf of a "beneficiary." R.C. 3334.01 (B), 3334.02, and 3334.09. The beneficiary of the bonds and credits may use them to pay for college or university tuition and other educational costs at certain institutions of higher education. R.C. 3334.01 (F) and (H), and 3334.09. The College Savings Bond Program and the Prepaid Tuition Program are administered by the Ohio Tuition Trust Authority. E.g., R.C. 3334.03, 3334.04, 3334.08 and 3334.09. You have explained that an individual has been asked to serve on the Ohio Tuition Trust Authority (Authority). This

individual has three children enrolled as beneficiaries in the Prepaid Tuition Program and would like to continue actively purchasing tuition credits. You have asked if he must observe any restrictions under the Ethics Law in this regard if he serves on the Ohio Tuition Trust Authority. In order to answer your question, it is necessary to examine the powers and duties of the Authority relative to the Prepaid Tuition Program.

The Ohio Tuition Trust Authority is a statutorily created board, established to exercise an "essential state governmental function." R.C. 3334.03 (A). The Authority has nine members, four of whom are appointed by the Governor with the advice and consent of the Senate, and four of whom are appointed by the Speaker of the House of Representatives and the President of the Senate. R.C. 3334.03 (B). The ninth member of the Authority, who serves as an ex officio voting member, is the Chancellor of the Board of Regents or a Vice-Chancellor designated by the Chancellor. Id. Of the four members appointed by the Governor, one represents state institutions of higher education, one represents private non-profit colleges and universities in Ohio, and the remaining two have experience in banking, investment banking, marketing, insurance, or law. Id. There is no statutory requirement that any member must be a participant in the tuition credit or savings bonds programs.

The Speaker of the House and the President of the Senate each designate a member of the Authority to serve as the co-chairs of the Authority. R.C. 3334.03 (D). The four gubernatorial appointees and the Chancellor of the Board of Regents, or his designee, serve as the executive committee of the Authority. Id. The individual in your question would be a member of the Authority's executive committee. The Authority may delegate Authority duties and responsibilities to the executive committee, except that the Authority is prohibited from delegating the final determination of the annual price of a tuition credit, the final designation of bonds as college savings bonds, or the employment of the Authority's executive director. Id. See also Ohio Admin. Rule No. 3334-1-02.

Specifically relative to tuition credits, the Authority has the power to develop a plan for the sale of credits and supplemental credits. R.C. 3334.07 (A). The Authority establishes the price of a tuition credit purchased on behalf of a beneficiary, based on actuarial principles and reasonably approximating one per cent of the weighted average tuition for the calendar year when it is issued. R.C. 3334.07 (B). The Authority is also charged with the responsibility of determining the weighted average tuition of four-year state universities and colleges in each school year. Id.

In the administration of the College Savings Program, the Authority is empowered, among other powers, to: (1) impose reasonable residency requirements for beneficiaries of tuition credits; (2) impose reasonable limits on the number of tuition credit participants; (3) impose and collect administrative fees and charges in connection with any transaction under Chapter 3334; (4) purchase insurance "to . . . ensure the value of tuition credits"; (5) adopt rules for the implementation of the College Savings Program; (6) impose limits on the number of credits that can be purchased on behalf of any beneficiary; and (7) impose restrictions on the substitution of another individual for the original beneficiary. R.C. 3334.08. The Authority may enter into contracts "necessary to the exercise and discharge of the powers and duties of the Authority" and may enter into other contracts for goods or services necessary to the management

and operation of the Authority, such as banking and insurance services, financial consultants, actuaries, and auditors, credit card services, and contracts with employees. R.C. 3334.08 (A)(6), (A)(9), (A)(10), (A)(11), and (A)(12).

The Authority may enter into contracts with any person for the purchase of tuition credits on behalf of a beneficiary. R.C. 3334.09. The contract shall allow the person to purchase up to four hundred tuition credits on behalf of a beneficiary, at the price determined by the Authority for the year in which the tuition credit is purchased. R.C. 3334.09 (A). Each tuition credit purchased on behalf of a beneficiary shall entitle the beneficiary to an amount equal to one per cent of the tuition charged for a full-time student during an academic year by the state institution at which the beneficiary is enrolled. R.C. 3334.09 (A)(1). If the beneficiary is enrolled at an institution other than a state institution, he shall be entitled to one per cent of the weighted average tuition for each tuition credit. Id. Up to four hundred supplemental tuition credits, redeemable for supplemental educational expenses, such as room and board, may also be purchased pursuant to a tuition payment contract. R.C. 3334.09 (B). In the tuition payment contract, the Authority may provide that if the contract has not been terminated, and the credits have not been used within a specific period of time, the Authority may terminate the contract and retain the amounts payable under the contract. R.C. 3334.09 (E). If a refund is paid upon termination of a tuition payment contract, the Authority is empowered to determine the method and schedule of repayment of the refund upon termination. R.C. 3334.10 (B).

The Authority is the trustee of the Ohio Tuition Trust Fund, and may invest its assets in any investments approved by the General Assembly for investment by the Public Employees Retirement System. R.C. 3334.11 (D). The Authority must have an annual evaluation of the actuarial soundness of the trust fund. R.C. 3334.12 (A). So long as the decision is based on sound actuarial principles and does not jeopardize the actuarial soundness of the fund, the Authority may, "in its sole discretion," provide a greater benefit than that required by R.C. 3334.09 for beneficiaries enrolled in any specific state institution or groups of institutions. R.C. 3334.12 (B).

Since tuition credits are sold by the Tuition Trust Authority pursuant to contract, it is first necessary to determine whether the provisions of R.C. 2921.42, the public contract prohibitions of the Ohio Ethics Law, apply to your question. See R.C. 3334.09 and discussion above. R.C. 2921.42 (A)(1) prohibits, in part, a public official from authorizing, or using the authority or influence of his public position to secure authorization of, a public contract in which he or a member of his family has an interest. R.C. 2921.42 (A) (3) prohibits a public official from occupying any position of profit, while he is a public official and for one year thereafter, in the prosecution of a public contract authorized by him or by a commission or board of which he was a member when the contract was authorized, unless the contract was let by competitive bidding to the lowest and best bidder. R.C. 2921.42 (A)(4) prohibits a public official from having an interest in a public contract entered into by or for the use of the governmental entity with which he is connected.

A member of the Ohio Tuition Trust Authority is an appointed officer of the state, and is, therefore, a "public official" for purposes of R.C. 2921.42. R.C. 2921.01 (A). See generally Ohio Ethics Commission Advisory Opinion No. 87-003. In order to determine whether the public contract prohibitions set forth above apply to your situation, it is necessary to determine whether

the tuition payment contracts between the Ohio Tuition Trust Authority and tuition credit purchasers are "public contracts" for purposes of R.C. 2921.42.

The term "public contract" is defined as follows in Division (F) of Section 2921.42:

(1) "Public contract" means any of the following:

(a) 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;

(b) A contract for the design, construction, alteration, repair, or maintenance of any public property. (Emphasis added.)

Any purchase or acquisition of property or services by or for the use of a governmental entity constitutes a "public contract," whether the money to purchase the property or services flows from the governmental entity or from another party. See, e.g., Advisory Opinions No. 84-011 and 90-003. The key factor in determining whether a contract is a "public contract" is whether the governmental entity is acquiring, either through purchase, grant, tax abatement, donation, loan, or other method, property or services. See, e.g., Advisory Opinions No. 78-006 (purchase), 84-011 (grant), 89-008 (tax abatement), 90-003 (donation), and 91-011 (loan).

In the situation you have described, the tuition payment contract is entered into between the Ohio Tuition Trust Authority and tuition credit purchasers. R.C. 3334.09 (A). A tuition payment contract allows any person to purchase tuition credits on behalf of a beneficiary at the price determined by the Authority. Id. For each tuition credit purchased on behalf of a beneficiary, the beneficiary of the contract is entitled to an amount equal to one per cent of the tuition charged for a full-time student during the academic year for which the student is enrolled, or one per cent of the weighted average tuition, determined by the Authority, if the student is enrolled at a college or university other than a state university or college. Id. For each supplemental tuition credit purchased on behalf of a beneficiary, the beneficiary is entitled to a payment equal to the amount paid for the credit, plus the investment earnings on the credit, minus the Authority's administrative costs. R.C. 3334.10 (B). These payments may be used for room, board, textbooks, and other supplemental tuition expenses. Id.

The Authority takes all of the money invested pursuant to tuition trust contracts and deposits it in the Tuition Trust Fund. R.C. 3334.11. The assets of the Tuition Trust Fund are expended for the following purposes:

(B) Unless otherwise provided by the authority, the assets of the Ohio tuition trust fund shall be expended in the following order:

(1) To make payments to beneficiaries, or institutions of higher education on behalf of beneficiaries, under division (A)(1) of section 3334.09 of the Revised Code;

(2) To make payments to beneficiaries under division (B) of section 3334.09 of the Revised Code;

(3) To make refunds as provided in divisions (B) and (C) of section 3334.10 of the Revised Code;

(4) To pay the investment fees and other costs of administering the fund.

R.C. 3334.11 (B).

The College Savings Program itself was created by the General Assembly for very specific reasons. Those reasons are enumerated in R.C. 3334.02 (A):

In order to help make higher education affordable and accessible to all citizens of Ohio, to maintain state institutions of higher education by helping to provide a stable financial base to these institutions, to provide the citizens of Ohio with financing assistance for higher education and protection against rising tuition costs, to encourage saving to enhance the ability of citizens of Ohio to obtain financial access to institutions of higher education, to encourage elementary and secondary students in this state to achieve academic excellence, and to promote a well-educated and financially secure population to the ultimate benefit of all citizens of the state of Ohio, there is hereby created the Ohio college savings program. The program shall consist of the issuance of college savings bonds and the sale of tuition credits and supplemental tuition credits.

The Authority and the programs it administers were created by the General Assembly for a public purpose. R.C. 3334.02 (A). The College Savings Program was established to give the State a method to meet the goals set forth in R.C. 3334.02. As described above, purchasers of tuition credits are essentially putting their money into a savings contract. The money is invested by the Authority, and generally expended for the college education of a beneficiary. There is no question that contracts setting forth the rights and responsibilities of the respective parties are a part of the College Savings Program. However, the Authority itself acquires no specific property or services as a result of the contracts between the tuition credit purchasers and the Authority. Unlike a grant or loan for the development of property, for example, where the public entity that makes the grant or loan receives a "service" in the form of the development of property, there is no specific service flowing from the tuition program participants back to the State. In fact, the program appears to be principally a state-endorsed directed savings program that is self-supporting based on the investment of participant contributions. While the College Savings Program is intended to meet the goals set forth in R.C. 3334.02, and serves a strong public purpose, the accomplishment of these goals does not amount to the acquisition of any service for the Authority. The State will certainly benefit generally from the program. However, this general benefit cannot be considered a "service" received by the State for purposes of R.C. 2921.42. The parties who are acquiring specific services are, in fact, the purchaser and the beneficiary, rather than the Authority. The purchaser receives the group investment services of the Authority, and the beneficiary ultimately receives a contribution toward the expenses of his college education.

Therefore, the contract between the Authority and the tuition credit purchaser is not a "public contract" for purposes of R.C. 2921.42, and it is unnecessary to discuss the prohibitions of R.C. 2921.42 in the context of your question.

Although the public contract prohibitions of R.C. 2921.42 do not apply to your question, there are conflict of interest provisions that must also be examined to fully answer your question. Divisions (D) and (E) of R.C. 102.03 provide:

(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.

A member of the Ohio Tuition Trust Authority is appointed to an office of an authority of the state, and is, accordingly, a "public official or employee" for purposes of R.C. 102.03. R.C. 102.01 (B) and (C). See R.C. 3334.02 and 3334.03. See generally Advisory Opinion No. 90-012.

The term "anything of value" is defined for purposes of R.C. 102.03 to include money, goods, interest in realty, and every other thing of value. R.C. 1.03 and 102.01 (G). The Commission has stated that, for example, an increase in the value of property is included within the definition of "anything of value" for purposes of R.C. 102.03. See, e.g., Advisory Opinion No. 92-019. The tuition credits in your question are purchased by the contract holder and held for the use of the beneficiary designated in the contract. See generally R.C. 3334.09-.10. The credits are purchased at the price set by the Authority but, when redeemed or refunded, may be worth significantly more than their original purchase price. The credits, any appreciation in the value thereof, and any other financial benefit to the purchaser or beneficiary under the program are within the definition of "anything of value" for purposes of R.C. 102.03 (D).

The question is whether the individual in your question will experience a conflict of interest between his personal interests as a participant in the Prepaid Tuition Program or the interests of his beneficiaries, and his official duties as member of the Authority.

Generally, R.C. 102.03 (D) and (E) prohibit a public official or employee from accepting, soliciting, or using the authority or influence of his public office or employment to secure anything of value, where the thing of value could impair his objectivity and independence of judgment with respect to his official actions and decisions for the agency that he serves. See Advisory Opinions No. 87-009, 88-004, 88-005, 92-009, and 92-019. R.C. 102.03 (D) prohibits a public official or employee from participating in his official capacity in matters that have a definite and particular effect on his personal pecuniary interests or on the pecuniary interests of another party where the interests of the other party could impair the official's objectivity. Advisory Opinions No. 90-008 and 92-009. For example, R.C. 102.03 (D) prohibits a public official or employee from voting, discussing, deliberating, or otherwise using his position or

authority, formally or informally, in any way, on any matter before the agency he serves that would have an impact on the value of property he owns. See Advisory Opinions No. 88-004 and 92-019. R.C. 102.03 (E) prohibits a public official or employee from accepting or soliciting anything of value that could impair his objectivity or independence of judgment. For example, a public official is prohibited from financially profiting from any matter pending before his agency, regardless of whether he has participated in his official capacity in that matter. Advisory Opinion No. 90-008. In some cases, the Commission has determined that the conflicts between a public official's private position or interests and his public position are so compelling and unavoidable that the official is prohibited by R.C. 102.03 (D) and (E) from holding both the public position and private interests. Advisory Opinions No. 92-008 (a township clerk is prohibited from also holding employment with a bank that is a depository of township funds) and 92-009 (the executive director of the State Barber Board is prohibited from owning and operating a barber shop).

According to Revised Code Chapter 3334., the Tuition Trust Authority sets policy and makes decisions about the operation of the state's Prepaid Tuition Program and administers the college savings bond program. It appears that the individual in your question does not personally participate in the college savings bond program. Therefore, if the individual in your question does become an Authority member, R.C. 102.03 (D) and (E) would not, under the facts presented, prohibit his participation in matters affecting the savings bond program. However, the individual in your question has contracted with the Authority to purchase tuition credits for three beneficiaries under the Prepaid Tuition Program and is one of the participants in the program. The Authority's duties relative to the investment and management of the Tuition Trust Fund and administration of the Prepaid Tuition Program financially impact all participants in the program and their beneficiaries.

Among the Authority's many duties regarding the Tuition Trust Fund and Prepaid Tuition Program, such as investment (R.C. 3334.11) and actuarial evaluation (R.C. 3334.12), it has numerous responsibilities that involve considerable discretion. The performance of some of these responsibilities relative to the Prepaid Tuition Program could financially impact the individual in your question as a participant in the Prepaid Tuition Program and could impact on the appreciation in the value of his tuition credits. For example, the Authority is required to establish the purchase price of tuition credits. R.C. 3334.07 (B). The purchase price must be based on sound actuarial principles and, to the extent possible, shall "reasonably approximate one per cent of the weighted average tuition for" the academic year when the price is set, plus the cost of administering the program. Id. The "weighted average tuition" is determined by a strict mathematical formula set forth in R.C. 3334.01 (J). Although the Authority has guidelines for setting the purchase price, it is clear that the Authority also has some discretion. The price of a tuition credit will financially impact all participants in the plan who intend to continue purchasing credits. You have stated in your letter that the individual in your question has plans for "continued tuition credit purchase." The individual in your question is not absolutely prohibited from continuing to buy credits if he serves as a member of the Authority. The interests of the individual will clearly be affected, however, by the tuition credit price set by the Authority. R.C. 102.03 (D) would thus prohibit the individual in your question, if he became an Authority member, from voting, discussing, deliberating, formally or informally lobbying other Authority members or Authority employees, or otherwise participating when the Authority sets

the purchase price for tuition credits. When the individual has purchased the maximum number of credits he may purchase (800 for each beneficiary), and is statutorily unable to purchase additional credits, the individual will no longer be impacted by the decisions of the Authority relative to establishing the purchase price of tuition credits, and he could, at that time, participate in the decision-making of the Authority regarding the purchase price of tuition credits.

Some of the Authority's other duties that could result in a direct and definite impact on the interests of the individual in your question, such that he would be prohibited, by R.C. 102.03 (D), from participating in the decisions of the Authority, are: (1) any decisions limiting the number of credits that can be purchased on behalf of any beneficiary and restricting the substitution of another individual for the original beneficiary; (2) any decisions regarding the establishment or collection of administrative fees and charges in connection with the Prepaid Tuition Program; and (3) any decisions involving the exercise of discretion relative to the terms and conditions of tuition savings contracts.

Depending on the facts and circumstances that may exist or arise with respect to the individual's particular situation at a particular time, the individual would be prohibited, as an Authority member, from participating in certain other matters. For example, if the beneficiaries to the contracts of the individual leave the State of Ohio, or the individual should have reason to believe that they will move away from the State, the individual will be prohibited, by 102.03 (D), from acting, as an Authority member, on any matters involving the residency requirement for beneficiaries. R.C. 3334.08 (A)(1). In a second example, the Authority may, "in its sole discretion," provide a greater benefit than that required by R.C. 3334.09 for beneficiaries enrolled in any specific state institution or groups of institutions. R.C. 3334.12 (B) (the decision must be based on sound actuarial principles and must not jeopardize the actuarial soundness of the fund). If one of the individual's children, who is a beneficiary of a tuition credit contract, attends or the individual has reason to believe the child plans to attend a particular college, the Authority's decision to increase the tuition credit benefit for that school could impact on the amount of increase in the value of the credits owned or purchased by the individual in your question. In these circumstances, R.C. 102.03 (D) would prohibit the individual in your question, if he becomes an Authority member, from participating in the decisions of the Authority relative to an increased credit benefit for credits redeemed at the specific university attended or considered by his child. If, however, the individual's children are not attending college and have not planned to attend any particular college, the individual would not be prohibited, by R.C. 102.03 (D), from participating in Authority decisions relative to increasing the credit benefit for particular schools. In another example, if the beneficiaries to the contracts of the individual meet the statutory requirements for termination of their contracts, the individual would be prohibited by R.C. 102.03 (D), from participating as an Authority member in any matters relative to the mechanisms of termination or refund. R.C. 3334.10.

Some of the Authority's duties, however, will not have such a direct and definite impact on the interests of the individual in your question such that he would be prohibited from participating in the decisions if he became an Authority member, regardless of the specific facts and circumstances of his situation. For example, the Authority is the trustee of the Ohio Tuition Trust Fund, and may invest its assets in any investments approved by the General Assembly for investment by the Public Employees Retirement System. R.C. 3334.11 (D). Decisions regarding

the investment of all of the assets of the Tuition Trust Fund would not render such a definite and direct impact on the interests of the individual in your question that he would be prohibited from participating in those decisions if he becomes an Authority member. Some other decisions of the Authority that would not render a direct and definite benefit to the individual in your question such that he would be prohibited from participating as an Authority member are: (1) the decisions of the Authority to contract with particular service and good providers to aid the Authority in carrying out its duties; (2) the decisions of the Authority to enter into employment contracts as necessary; and (3) the decisions of the Authority relative to the annual actuarial audit of the fund assets. R.C. 3334.08 (A)(6) and (A)(11), 3334.12.

Regardless of the particular facts and circumstances, the individual in your question is also prohibited, by R.C. 102.03 (D), from misusing his position as an Authority member to secure any benefit under the plan. See Advisory Opinion No. 92-019. The individual is prohibited from taking advantage of his unique access to the Authority, in any way, to secure any greater or particular benefit or privilege for himself or the beneficiaries to the contracts he holds. Id. The individual is also prohibited, by R.C. 102.03 (E), from accepting or soliciting any greater or particular benefit that is not available to all members of the plan generally. Advisory Opinions No. 92-013 and 92-019.

You have stated in your letter that the individual in your question would "like to continue to actively purchase credits after his appointment, with the belief that his role as a purchaser would be appropriate and add an important dimension to his contribution of service to the Board." The Commission does not contest the value of this position. It could well benefit the College Savings Program for participants in the plan to also serve as members of the Authority, and to participate fully in the Authority's duties. The statutory enabling language for many professional boards contains specific requirements that some of the board positions be held by practitioners of the profession. See, e.g., R.C. 4709.04 (two members of the Barber Board must be registered barbers), 4731.01 (eight members of the Medical Board must be physicians and surgeons licensed to practice in Ohio), and 4761.02 (three members of the Respiratory Care Board must be respiratory care professionals). See also Advisory Opinions No. 90-012 (concerning the Respiratory Care Board) and 92-009 (concerning the Barber Board). The Public Employees Retirement Board is statutorily composed, in part, of participants in the retirement system. R.C. 145.04 (five members of the Board are employee participants in the system and one is a retiree participant in the system). However, there is no comparable statutory requirement that any members of the Tuition Trust Authority shall be also be members of the tuition savings or college savings bond programs. It is for the General Assembly to determine that the value of the contributions of a regulated party or program participant outweighs the potential for conflict of interest that exists when such individuals serve on the state board or authority that regulates the program in which they participate, and to permit the participant-board members to fully take part in the board's decision-making. In the situation you have set forth, the individual is in a very delicate position. He should contact the Ohio Ethics Commission with any specific question he may have with respect to a particular matter before he takes action on that matter.

As a final matter, it should be noted that the Authority is the trustee of the Tuition Trust Fund. R.C. 3334.11 (D). Accordingly, the individual members of the Authority have a fiduciary responsibility with regard to the fund. Id. In his fiduciary capacity, each member of the Authority

is bound by the requirements of R.C. 145.111, 145.112, and 145.113, which also apply to the members of the Public Employees Retirement System (PERS) Board. R.C. 3334.11 (D). These statutes are not within the jurisdiction of the Ohio Ethics Commission. However, you may wish to seek the guidance of the Authority's legal advisor with regard to the application, if any, of these sections to the instant situation.

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 an individual who participates in the Ohio Prepaid Tuition Program from serving as a member of the Ohio Tuition Trust Authority; (2) Tuition payment contracts entered into pursuant to Section 3334.09 of the Revised Code are not "public contracts" for purposes of Division (F) of Section 2921.42 of the Revised Code; (3) Division (D) of Section 102.03 of the Revised Code prohibits a member of the Ohio Tuition Trust Authority, who also participates in the Ohio Prepaid Tuition Program, from voting, discussing, deliberating, formally or informally lobbying, or otherwise using the authority or influence of his position in any way with respect to any matter that would have a definite and particular effect on his financial interests or the interests of his beneficiaries under the program; and (4) Division (D) of Section 102.03 of the Revised Code does not prohibit a member of the Ohio Tuition Trust Authority, who also participates in the Ohio Prepaid Tuition Program, from voting or otherwise participating in any official matters that would not have a definite and particular effect on his financial interests or the interests of his beneficiaries under the program.


Jack Paul DeSario, Chair
Ohio Ethics Commission