



OHIO ETHICS COMMISSION

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Advisory Opinion Number 97-004

December 4, 1997

Syllabus by the Commission:

(1) Division (A)(1) of Section 2921.42 and Division (D) of Section 102.03 of the Revised Code prohibits a public official from authorizing, or employing the authority or influence of his office to secure the authorization of, any public contract in which a member of his family has an interest;

(2) The Ohio Ethics Law and related statutes do not, per se, prohibit a County Library District from employing a substitute reference librarian whose mother is already employed by the Library as an Assistant Director;

(3) Division (A)(1) of Section 2921.42 of the Revised Code prohibits the Library's Assistant Director from participating in any part of the decision-making process authorizing or approving her child's employment and from exercising the power and influence of her public employment to affect the Library's decision-making process regarding the employment of her child even if she abstains from participating in official proceedings;

(4) When a public official receives approval from her agency's "appropriate officials" to withdraw from a matter which would create a conflict of interest, the agency should assign the matter to an official or employee who is removed from the power and influence of the withdrawing public official. Such officials or employees should normally include an official or employee who serves at a supervisory level above, or equal to, the withdrawing public official, and may also include an official or employee at a level subordinate to the withdrawing public official so long as they directly report on the matter to a supervisor of the withdrawing public official;

(5) Division (D) of Section 102.03 of the Revised Code prohibits the Library's Assistant Director from using her authority or influence, formally or informally, to secure her child's employment, to influence the decisions or actions of other officials or employees in matters that would affect the interests of her child's individual employment relationship, or to otherwise act with respect to her child's public employment on matters including, but not limited to, changes in compensation or benefits determined by individual working conditions, the assignment of duties, evaluations, and actions involving promotions, discipline, lay-offs, and termination.

You have asked whether the Ohio Ethics Law and related statutes prohibit the County Library District ("Library") from employing a substitute reference librarian whose mother is already employed by the Library as its Assistant Director.

You have explained that the Library employs approximately eighty (80) people at its five branches. In addition to its regular employees, the Library also employs substitute employees. You have stated that the Library seeks to hire a qualified substitute reference librarian whose mother is already employed by the Library as its Assistant Director. You have also stated that, while the Assistant Director oversees the Branch Managers and usually makes most hiring decisions, the Library's Director and Human Resources Manager will make the hiring decision with respect to this librarian.

Initially, the Commission reminds all public officials and employees that they are prohibited from authorizing, or employing the authority or influence of their office to secure the authorization of, the hiring of a family member. For the reasons which follow, the Commission has concluded in this opinion that, after approving the Assistant Director's withdrawal from the hiring decision, the Library is not prohibited from employing its Assistant Director's child. The Library should, however, assign the decision to an employee who serves at a supervisory level above, or equal to, the Assistant Director, or to one of the Assistant Director's employees so long as the employee directly reports to the Assistant Director's supervisor on the matter. Moreover, the Assistant Director is prohibited from using the power and influence of her public position to secure her child's employment, from influencing others in matters affecting her child's employment, and from participating in Library decisions involving her child's compensation, benefits, job duties, evaluations, promotions, discipline, lay-offs, and termination.

Public Contract Prohibition Against Authorizing a Family Member's Employment--R.C. 2921.42(A)(1)

You have asked whether the Ohio Ethics Law and related statutes prohibit the Library from employing a substitute reference librarian whose mother is already employed by the Library. The section of the law that is most applicable to your question is R.C. 2921.42(A)(1), which provides:

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

(1) Authorize, or employ the authority or influence of his office to secure authorization of any public contract in which he, a member of his family, or any of his business associates has an interest.

The Ethics Commission has held, in a companion opinion, that an employee of a county library district is a "public official" for the purposes of R.C. 2921.42. See Ohio Ethics Commission Advisory Opinion No. 97-003. Therefore, the Library's Assistant Director is a "public official" and is subject to the prohibitions of Section 2921.42(A).

The term "public contract" is defined in R.C. 2921.42(G)(1)(a) for purposes of R.C. 2921.42 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. Prior to 1994, the Commission had interpreted the term "public contract" to include public employment. See Adv. Op. No. 90-010. See also Walsh v. Bollas (Lake App. 1992), 82 Ohio App. 3d 588 (holding that "public contract" under R.C. 2921.42(A)(1) includes public employment); In re Removal of Steed, unreported, Case No. 1909 (Lawrence App., July 27, 1989) (same). In 1994, the Legislature amended R.C. 2921.42(G)(1)(a) to expressly include "the employment of an individual by the state, any of its political subdivisions, or any agency or instrumentality of either" within its definition of a "public contract." R.C. 2921.42(G)(1)(a) makes no distinction between written and oral employment contracts, nor between full-time and part-time employment.

Therefore, R.C. 2921.42(G)(1)(a) applies to the employment of the Assistant Director's child even though she has been hired as a substitute employee, as opposed to a full-time employee, and her employment is still a public contract. This conclusion is supported by the absence of any distinction in the type of employment defined in R.C. 2921.42(G)(1)(a), which did not change or modify the Commission's interpretation of "public contract," prior to the amendment in 1994, as including full-time, part-time, temporary, permanent, classified, unclassified, and non-civil service employment. See Adv. Op. No. 90-010.

R.C. 2921.42(A)(1) prohibits a public official from authorizing, or employing the authority or influence of his office to secure the authorization of, any public contract, including employment, in which "a member of his family" has an interest. See Adv. Ops. No. 90-010 and 92-012. For purposes of R.C. 2921.42, a "member of his family" has been defined by the Commission as including, but not limited to, the public official's spouse, children (whether dependent or not), parents, grandparents, grandchildren, and siblings. See Adv. Ops. No. 80-001, 90-010, and 92-012. The Commission has also included in this definition any other persons related to the official by blood or marriage who reside in the same household as the official. Id.

Therefore, R.C. 2921.42(A)(1) prohibits the Library's Assistant Director from authorizing, or employing the authority or influence of her office to secure authorization of, the employment of her child by the political subdivision with which she serves. See Adv. Ops. No. 85-015, 90-010, and 92-012. Please note that the Commission has further explained that this prohibition extends beyond the initial hire of a family member and prohibits a public official from participating in any matter or decision which would affect the continuation, implementation, or terms and conditions of her family member's employment. See Adv. Ops. No. 82-003, 89-005, and 92-012.

The exact actions prohibited by R.C. 2921.42(A)(1) turn on the Commission's interpretations of the terms "authorize" and "employ the authority or influence of his office." The Commission has determined that a public official will be deemed to have "authorized" a public contract, for the purposes of R.C. 2921.42, where the contract could not have been awarded without the public official's approval. See Adv. Ops. No. 87-004, 88-008, 90-010, and 92-012. Accordingly, a public official is prohibited by R.C. 2921.42(A)(1) from voting or participating in any part of his public agency's decision-making process authorizing or approving an individual contract of employment for a member of his family. See Adv. Ops. No. 89-005, 90-010, and 92-012. Further, the Commission has determined that R.C. 2921.42(A)(1) prohibits a public official from using "the authority or influence of his office" by exercising the power and influence

inherent in the position and prestige of his public office or employment to affect the decision-making process regarding the employment of a family member even if the official abstains subsequently from voting and participating in official proceedings. See Adv. Op. No. 90-012.

The Commission has explained that the prohibitions contained in R.C. 2921.42(A)(1) do not create a "no relatives policy":

R.C. 2921.42(A)(1) does not prohibit a family member of a public official from being employed by the same political subdivision which the official serves; rather it prohibits the public official from taking any action to secure employment for his family member. The purpose of R.C. 2921.42(A)(1) is to prevent the possibility that a public official may show favoritism in the exercise of his discretionary, decision-making authority in authorizing a contract for public employment. . . .

. . . R.C. 2921.42(A)(1) will absolutely prevent employment of a public official's family member only in instances where the public official is the sole or ultimate hiring authority, and where there is no other person or entity who may exercise such hiring authority. A family member of an official will not be prevented from being employed by the same political subdivision in instances where the appointment may be made by some other person or entity who may exercise such hiring authority, where it is possible for a superior to authorize the employment, or where the official is not the appointing authority for that particular position. The official is, however, required under all circumstances to abstain from participating in the employment process.

Adv. Op. No. 90-010 (emphasis added) (citations omitted). See also *State ex rel. Halleck v. Delaware County Commissioners*, unreported, Case No. 96CA-E-04-021 (Delaware App., Dec. 13, 1996) (holding that R.C. 124.11(B)(1) prevents local governments from implementing a broadly inclusive "no relatives" employment policy). Therefore, R.C. 2921.42(A)(1) prohibits the Assistant Director from participating in any part of the Library's decision-making process with respect to her child's employment and from exercising the power and influence of her public employment to affect the terms and conditions of her child's employment even if she does not participate in the original hiring decision.

Hiring a Family Member After the Withdrawal of the Public Official or Employee

You have stated that, while the Assistant Director usually makes most hiring decisions, the Library's Director and Human Resources Manager will make the hiring decision with respect to the Assistant Director's child. The Commission has determined that when a public official is prohibited from participating in a particular matter by law, that official may withdraw from the matter which would create the conflict, if such withdrawal does not interfere with performance of her duties, and is approved by the appropriate official or officials at her employing agency. See Adv. Op. No. 90-010. These appropriate officials must be determined by the public entity involved, and therefore will vary with the facts of each individual case. Accordingly, in some situations, a public official seeking to withdraw from a matter may merely need the approval of her direct supervisor, while in other situations, the public official may need the approval of the governing board or a central group which considers all withdrawal requests within the agency. In

your situation, either the Library's Director or Board of Trustees may be the appropriate officials to approve the Assistant Director's withdrawal from this matter.

Once the withdrawal is approved, the hiring process and decision to hire must be assigned to an official or employee who is removed from the power and influence of the withdrawing public official. Such officials or employees should normally include an official or employee who serves at a supervisory level above, or equal to, the withdrawing public official, and may also include an official or employee at a level subordinate to the withdrawing public official so long as they directly report on the matter to a supervisor of the withdrawing public official. Thus, "R.C. 2921.42(A)(1) will absolutely prevent employment of a public official's family member only in instances where the public official is the sole or ultimate hiring authority, and where there is no other person or entity who may exercise such hiring authority." See Adv. Op. No. 90-010.

For example, the Director is in a position superior to, and appears to act as a check upon the actions of, the Assistant Director. If, under Chapter 3375. of the Revised Code or whatever other governing instrument may apply, it is possible for the Library Director to act in the place of the Assistant Director in all matters pertaining to the employment of the Assistant Director's child, then the employment of the Assistant Director's child would not be prohibited. However, the determination of whether the Director may act in these matters is a matter to be resolved by the Library Board and its Director, pursuant to their powers and authority, not the Ohio Ethics Commission.

You have also stated that the Assistant Director oversees the Library's Branch Managers. Presumably, as a substitute reference librarian, the Assistant Director's child would fall under the supervisory authority of one or more of these Branch Managers. The law does not prohibit a Branch Manager from supervising the Assistant Director's child, so long as the Branch Manager reports to the Assistant Director's supervisor on matters involving the Assistant Director's child. It bears repeating, however, that R.C. 2921.42(A)(1) prohibits the Assistant Director from exercising the power and influence of her position to affect the continuation, implementation, or terms and conditions of her child's employment.

Use of Authority or Influence to Secure or Affect a Family Member's Employment--R.C. 102.03(D)

In addition to R.C. 2921.42(A)(1), your question also implicates R.C. 102.03(D), which provides:

No public official or employee shall use or authorize the use of the authority or influence of 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 the public official or employee with respect to that person's duties.

The Commission has held, in a companion opinion, that an employee of a county library district is a "public official or employee" for the purposes of R.C. 102.03. See Adv. Op. No. 97-

003. Therefore, the Library's Assistant Director is a "public official or employee" and is subject to the prohibitions of Section 102.03(D).

The term "anything of value" is defined for the purposes of R.C. 102.03(D) to include money, a promise of future employment, and every other thing of value. See R.C. 102.01(G) and R.C. 1.03. An employee's continued employment, and the compensation received therefor, falls within the definition of "anything of value." See Adv. Ops. No. 90-004 and 92-012.

The Commission has held that R.C. 102.03(D) prohibits a public official or employee from participating, formally or informally, in any matter which directly affects the private pecuniary interests of herself or any other party, if the relationship between the employee and the other party is such that the employee's objectivity and independence of judgment could be impaired. See Adv. Ops. No. 88-004 and 89-005. Specifically, the Commission has stated that R.C. 102.03(D) prohibits a public employee from using her authority or influence, formally or informally, to secure anything of value for members of the employee's family, including her spouse or children. See Adv. Ops. No. 89-008, 90-004, 91-004, and 92-012.

Therefore, R.C. 102.03(D) prohibits the Assistant Director from using her authority or influence, formally or informally, to secure the employment of her child, or to otherwise act with respect to her child's public employment. See Adv. Op. No. 92-012. These matters include, but are not limited to, any of the following: changes in compensation or benefits that are determined by individual working conditions, the assignment of duties, evaluations, and actions involving promotions, discipline, lay-offs, and termination. Id. Furthermore, R.C. 102.03(D) prohibits the Assistant Director from using the authority or influence of her office, formally or informally, to influence the decisions or actions of other officials or employees in matters that would affect the interests of her child's individual employment relationship.

Again, you have stated that, while the Assistant Director usually makes most hiring decisions, the Library's Director and Human Resources Manager will make the hiring decision with respect to the Assistant Director's child. However, the Assistant Director would be prohibited by R.C. 102.03(D) from using her authority or influence, formally or informally, to influence the decisions or actions of the Director, Human Resources Manager, and other Library employees, in matters that would affect her child's public employment.

This advisory opinion is based on the facts presented. It is limited to questions arising under Chapter 102. and Sections 2921.42, 2921.421, and 2921.43 of the Revised Code, and does not purport to interpret other laws or rules.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that: (1) Division (A)(1) of Section 2921.42 and Division (D) of Section 102.03 of the Revised Code prohibits a public official from authorizing, or employing the authority or influence of his office to secure the authorization of, any public contract in which a member of his family has an interest; (2) The Ohio Ethics Law and related statutes do not, per se, prohibit a County Library District from employing a substitute reference librarian whose mother is already employed by the Library as an Assistant Director; (3) Division (A)(1) of Section 2921.42 of the Revised Code prohibits the Library's Assistant Director from participating in any part of the decision-making

process authorizing or approving her child's employment and from exercising the power and influence of her public employment to affect the Library's decision-making process regarding the employment of her child even if she abstains from participating in official proceedings; (4) When a public official receives approval from her agency's "appropriate officials" to withdraw from a matter which would create a conflict of interest, the agency should assign the matter to an official or employee who is removed from the power and influence of the withdrawing public official. Such officials or employees should normally include an official or employee who serves at a supervisory level above, or equal to, the withdrawing public official, and may also include an official or employee at a level subordinate to the withdrawing public official so long as they directly report on the matter to a supervisor of the withdrawing public official; and (5) Division (D) of Section 102.03 of the Revised Code prohibits the Library's Assistant Director from using her authority or influence, formally or informally, to secure her child's employment, to influence the decisions or actions of other officials or employees in matters that would affect the interests of her child's individual employment relationship, or to otherwise act with respect to her child's public employment on matters including, but not limited to, changes in compensation or benefits determined by individual working conditions, the assignment of duties, evaluations, and actions involving promotions, discipline, lay-offs, and termination.

Sister Mary Andrew Matesich

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