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Advisory Opinion Number 98-003
June 19, 1998

Syllabus by the Commission:

(1) Division (A)(1) of Section 2921.42 and Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a public official from soliciting, 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;

(2) Division (A)(1) of Section 2921.42 of the Revised Code does not prohibit a local school district superintendent from voting, discussing, deliberating, lobbying, or otherwise participating in any part of the decision-making process regarding the collective bargaining agreement between the school district and a labor organization representing his daughter's bargaining unit, where his daughter is treated in the same manner as other similarly situated collective bargaining employees, unless she is an officer, board member, or member of the negotiating team of the labor organization;

(3) Divisions (D) and (E) of Section 102.03 of the Revised Code do not prohibit a local school district superintendent from voting, discussing, deliberating, lobbying, or otherwise participating in any part of the decision-making process regarding the collective bargaining agreement between the school district and a labor organization representing the daughter's bargaining unit so long as his daughter is treated in the same manner as other similarly situated collective bargaining employees.

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You have asked whether the Ethics Law and related statutes prohibit a local school district superintendent ("superintendent") from voting, discussing, deliberating, lobbying, or otherwise participating in any part of the decision-making process regarding the collective bargaining agreement between the school district and a labor organization representing the bargaining unit that includes his daughter. Ohio's Ethics Law and related statutes can restrict the actions which a superintendent may take with respect to an individual contract in which one of his family members has an interest. Generally, however, these provisions do not prohibit a superintendent's family members from being employed by the school district.

For the reasons explained below, the Commission has concluded that R.C. 2921.42(A)(1) does not prohibit a local school district superintendent from voting, discussing, deliberating,

lobbying, or otherwise participating in any part of the decision-making process regarding the collective bargaining agreement between the school district and a labor organization representing his daughter's bargaining unit, where his daughter is treated in the same manner as other similarly situated collective bargaining employees, unless she is an officer, board member, or member of the negotiating team of the labor organization. Further, the Commission has also concluded that R.C. 102.03(D) and (E) do not prohibit a local school district superintendent from voting, discussing, deliberating, lobbying, or otherwise participating in any part of the decision-making process regarding the collective bargaining agreement between the school district and a labor organization representing the daughter's bargaining unit so long as his daughter is treated in the same manner as other similarly situated collective bargaining employees.

Public Contract Prohibition Regarding the Employment of Family--R.C. 2921.42(A)(1)

The first section of the law that is applicable to your question is R.C. 2921.42(A)(1), which provides that no public official shall knowingly:

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 term "public official" is defined in R.C. 2921.01(A) for purposes of R.C. 2921.42 to include any elected or appointed officer or employee of a political subdivision of the state. The Ethics Commission has previously held that a member of a school district board of education is a "public official" under R.C. 2921.01(A). See Ohio Ethics Commission Advisory Opinions No. 82-003 and 89-005. Further, the Commission has previously held that a teacher in a local school district is a "public official" under R.C. 2921.01(A). See Adv. Op. No. 93-017. The Commission has not, however, previously considered whether the superintendent of a local school district is a "public official" under R.C. 2921.01(A).

The appointment and duties of a local school district superintendent are outlined in R.C. 3319.01, which provides in pertinent part:

Except in an island school district . . . the board of education in each school district and the governing board of each service center shall . . . appoint a person possessed of the qualifications provided in this section to act as superintendent, for a term not longer than five years

. . . .

A board may . . . reemploy such superintendent for a succeeding term for not longer than five years

. . . .

The superintendent shall be the executive officer for the board. Except as otherwise provided in this section for local school districts, the superintendent shall direct and assign teachers and other employees of the district or service

center, . . . assign the pupils to the proper schools and grades, . . . and perform such other duties as the board determines. (Emphasis added).

Therefore, like local school district teachers, a local school district superintendent is clearly an employee of a school district, and is a "public official," as that term is defined in R.C. 2921.01(A), such that the superintendent is subject to the prohibitions of R.C. 2921.42.

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. 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, 92-012, and 97-004. 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. Accordingly, R.C. 2921.42(A)(1) prohibits a superintendent from authorizing, or employing the authority or influence of his office to secure the authorization of, any public contract in which his daughter has an interest.

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. R.C. 2921.42(G)(1)(a) expressly includes "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." Therefore, R.C. 2921.42(A)(1) would prohibit a local school district superintendent from voting, discussing, deliberating, lobbying, or otherwise participating in any part of the decision-making process with respect to the continuation, implementation, or terms and conditions of his daughter's individual contract of employment. See Adv. Op. No. 82-003. Further, R.C. 2921.42(A)(1) would also prohibit a local school district superintendent from exercising the power and influence of his public position to affect the continuation, implementation, or terms and conditions of his daughter's individual contract of employment. Id.

Public Contract Prohibition Regarding Collective Bargaining Agreements--R.C. 2921.42(A)(1)

The Ethics Commission has recognized a distinction between an individual contract for public employment and a collective bargaining agreement. See Adv. Ops. No. 82-003, 89-005, and 92-012. In Advisory Opinion No. 82-003, the Commission explained that a collective bargaining agreement, which is entered into by a labor organization representing a political subdivision's employees and the political subdivision and which establishes the terms and conditions of employment for the covered employees, is a "public contract" for purposes of R.C. 2921.42. See also Adv. Ops. No. 89-005 and 92-012. The Commission has further held, however, that an individual employee's interest in the collective bargaining agreement is not "sufficiently definite and direct" to invoke the prohibitions of R.C. 2921.42(A)(1) so long as the employee is affected by the agreement in essentially the same manner as other employees subject to the agreement. See Adv. Ops. No. 82-003, 89-005, 89-008, and 92-012. Accordingly, even though a public official's family member is employed by a political subdivision subject to the

terms and conditions of a collective bargaining agreement, R.C. 2921.42(A)(1) does not generally prohibit the official from voting, discussing, deliberating, lobbying, or otherwise participating in any part of the decision-making process regarding the collective bargaining agreement. See Adv. Ops. No. 82-003, 89-005, and 92-012.

The Commission has also held, however, that an individual employee's interest in the collective bargaining agreement is "definite and direct" when the employee is an officer, board member, or member of the negotiating team of the labor organization. See Adv. Ops. No. 82-003, 89-005, 89-008, and 92-012. Accordingly, when a public official's family member is employed by a political subdivision subject to the terms and conditions of a collective bargaining agreement, and the employee is an officer, board member, or member of the negotiating team of the labor organization, R.C. 2921.42(A)(1) prohibits the official from voting, discussing, deliberating, lobbying, or otherwise participating in any part of the decision-making process regarding the collective bargaining agreement. See Adv. Ops. No. 82-003, 89-005, and 92-012.

The Commission has repeatedly advised public officials that when a family member is employed by a political subdivision subject to the terms and conditions of a collective bargaining agreement, the officials should refrain from taking an active role in the negotiations of that agreement in order to avoid an appearance of impropriety. See Adv. Ops. No. 89-005 and 92-012. Nevertheless, R.C. 2921.42(A)(1) does not prohibit a local school district superintendent from voting, discussing, deliberating, lobbying, or otherwise participating in any part of the decision-making process regarding the collective bargaining agreement between the school district and a labor organization representing his daughter's bargaining unit, where his daughter is treated in the same manner as other similarly situated collective bargaining employees, unless she is an officer, board member, or member of the negotiating team of the labor organization.

Conflict of Interest Prohibitions--R.C. 102.03(D) and (E)

The other sections of the law that are applicable to your question are R.C. 102.03(D) and (E), which provide:

(D) 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.

(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 the public official or employee with respect to that person's duties.

The term "public official or employee" is defined for purposes of R.C. 102.03 to include any person who is an employee of any public agency. See R.C. 102.01(B) and (C). The Commission has previously held that "with the exception of teachers, instructors, professors, or other kinds of educators whose positions do not involve the performance of, or authority to perform, administrative or supervisory functions, every official and employee of every school district in the state is considered a 'public official or employee' as defined in R.C. 102.01(B)."

See Adv. Op. No. 93-017 (emphasis added). Therefore, a superintendent of a local school district is a "public official or employee," such that the superintendent is subject to the prohibitions of R.C. 102.03.

The term "anything of value" is defined for the purposes of R.C. 102.03 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) and (E) prohibit a public official or employee from soliciting, or using his authority or influence to secure, formally or informally, anything of value for himself 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, 89-005, and 97-002. Specifically, the Commission has stated that R.C. 102.03(D) and (E) prohibit a public employee from soliciting or using his authority or influence, formally or informally, to secure anything of value for members of the employee's family, including his children. See Adv. Ops. No. 89-008, 90-004, 91-004, and 92-012.

Therefore, R.C. 102.03(D) and (E) prohibit a local school district superintendent from soliciting or using his authority or influence, formally or informally, to secure the employment of his daughter, or to otherwise act with respect to his daughter's individual contract of employment. See Adv. Ops. No. 92-012 and 97-004. 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 that will change the terms of the contract, evaluations, and actions involving promotions, discipline, lay-offs, and termination. Id. Furthermore, R.C. 102.03(D) and (E) prohibit a local school district superintendent from soliciting or using the authority or influence of his office, formally or informally, to influence the decisions or actions of other officials or employees in matters that would affect his daughter's interest in her individual employment relationship with the school district.

Conflict of Interest Prohibitions Regarding Collective Bargaining Agreements--R.C. 102.03(D) and (E)

The Ethics Commission, however, has held that R.C. 102.03(D) and (E) only prohibit a public employee from using his authority or influence in any matter which would render a particular "definite and direct pecuniary benefit or detriment." See Adv. Ops. No. 90-004, 92-019 and 93-016. In Advisory Opinion No. 92-012, the Commission stated that an individual employee's interest in a collective bargaining agreement is not "sufficiently definite and direct" to invoke the prohibitions of R.C. 102.03 so long as the employee is treated in the same manner as other similarly situated collective bargaining employees. See Adv. Op. No. 92-012. Accordingly, R.C. 102.03(D) and (E) do not prohibit a local school district superintendent from voting, discussing, deliberating, lobbying, or otherwise participating in any part of the decision-making process regarding the collective bargaining agreement between the school district and a labor organization representing his daughter's bargaining unit so long as she is treated in the same manner as other similarly situated collective bargaining employees. Id.

In conclusion, the Commission reminds all public officials and employees that R.C. 2921.42(A)(1) and R.C. 102.03(D) and (E) prohibit them from soliciting, authorizing, or employing the authority or influence of their office to secure the authorization of, any family member's individual contract of employment, and from voting, discussing, deliberating, or otherwise participating in any matter or decision which would affect the continuation, implementation, or terms and conditions of the family member's contract of employment. R.C. 2921.42(A)(1) and R.C. 102.03(D) and (E) also prohibit all public officials and employees from voting, discussing, deliberating, or otherwise participating in any part of the public agency's decision-making process authorizing or approving a family member's individual contract of employment, and from exercising the power and influence of their public office to affect the public agency's decision-making process regarding the family member's individual contract of employment. Indeed, public officials and employees will not be prohibited from participating in these matters in very limited circumstances: (1) where the individual employee's interest in the matter is not "sufficiently definite and direct," such as with collective bargaining agreements (unless the family member is an officer, board member, or member of the negotiating team of the labor organization); and (2) general appropriations which do not provide a definite and particular personal benefit to the family member.

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 Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a public official from soliciting, 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; (2) Division (A)(1) of Section 2921.42 of the Revised Code does not prohibit a local school district superintendent from voting, discussing, deliberating, lobbying, or otherwise participating in any part of the decision-making process regarding the collective bargaining agreement between the school district and a labor organization representing his daughter's bargaining unit, where his daughter is treated in the same manner as other similarly situated collective bargaining employees, unless she is an officer, board member, or member of the negotiating team of the labor organization; and (3) Divisions (D) and (E) of Section 102.03 of the Revised Code do not prohibit a local school district superintendent from voting, discussing, deliberating, lobbying, or otherwise participating in any part of the decision-making process regarding the collective bargaining agreement between the school district and a labor organization representing his daughter's bargaining unit so long as his daughter is treated in the same manner as other similarly situated collective bargaining employees.

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