



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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Advisory Opinion
Number 87-008
October 8, 1987

Syllabus by the Commission:

- (1) Division (A)(3) of Section 2921.42 of the Revised Code prohibits a member of a board of education, for a period of one year after leaving office, from accepting employment with the board where such employment was authorized by the board while he was a member thereof;
- (2) Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a member of a board of education from soliciting, or using the authority or influence of his office to secure, employment with the board;
- (3) Division (D) of Section 102.03 of the Revised Code prohibits a member of a board of education from voting, deliberating, participating in discussions, or otherwise using the authority or influence of his office to create a position with the school district or to set the compensation for such position where he is considering, or being considered for, employment in that position.

* * * *

You have asked whether the Ohio Ethics Law and related statutes prohibit a member of a board of education of a school district from being appointed as treasurer or assistant treasurer for the school district after resigning from membership on the board of education.

By way of history, you have stated that a member of a board of education has expressed an interest in the position of treasurer or assistant treasurer for the school district. The current treasurer intends to retire on or about July 1, 1988, and a person would be appointed at that time, to serve at least until the board's organizational meeting in January of 1989. The board of education does not currently employ an assistant treasurer, but is contemplating creating such a position. The board member's term of office expires on December thirty-first of this year, but is a candidate on the November ballot for a new term beginning on January 1, 1988. R.C. 3313.33 prohibits a member of a board of education from being employed in any manner for compensation by the board of which he is a member, and R.C. 3313.22 specifically provides that a treasurer employed by a board of education may not be a member of the board. However, you state that the member would resign from the board if he were appointed treasurer or assistant treasurer. You wish to know whether the board member may be appointed treasurer or assistant treasurer if he resigns or is not re-elected to the board. You have also asked whether it would be relevant if he were the most qualified candidate for either position.

Division (A)(3) of Section 2921.42 of the Revised Code provides that no public official shall knowingly:

- (3) During his term of office or within one year thereafter, occupy any position of profit in the prosecution of a public contract authorized by him or by a legislative body, commission, or board of which he was a member at the time of authorization, and not let by competitive bidding or let by competitive bidding in which his is not the lowest and best bid.

The term "public official" is defined for purposes of R.C. 2921.42 to include any elected officer of any political subdivision of the state. See R.C. 2921.01(A). A member of a board of education is an elected officer of a political subdivision. See R.C. 3313.01, 3313.02. Therefore, a member of a board of education is a "public official" for purposes of R.C. 2921.42. See Advisory Opinions No. 82-003 and 85-009.

The term "public contract" is defined for purposes of R.C. 2921.42 in Division (E) of that section to include the purchase or acquisition, or a contract for the purchase or acquisition of property or services by or for the use of a political subdivision of the state. In Advisory Opinions No. 85-003 and 85-015, the Ethics Commission concluded that an employment relationship entered into between a political subdivision and an employee constitutes a "public contract" for purposes of R.C. 2921.42, since the political subdivision is purchasing or acquiring the services of the employee. See generally R.C. 3313.22 and R.C. 3319.081 (authority of board of education to contract with a treasurer and other nonteaching employees). R.C. 2921.42(A)(3), therefore, prohibits a member of a board of education, for a period of one year after leaving office, from being employed by the board where the board of education, the legislative authority of the school district, authorized his employment while he was still a member thereof. The board member is bound by this prohibition regardless of the fact that he did not deliberate, vote upon, or otherwise authorize, his own employment. (Division (A)(1) of Section 2921.42 prohibits a public official from authorizing, or employing the authority or influence of his office to secure authorization of any public contract in which he has an interest.) Because employees are not hired pursuant to competitive bidding, the board member would be prohibited from being employed by the board, even though he may possess the best qualifications for the position. A board member may not, therefore, be employed as the treasurer or assistant treasurer of the school district, and then resign as board member to serve in either position.

Your question also raises the issue whether a board member who is interested in employment with the school district may resign from the board and then be employed by the board of education. Divisions (D) and (E) of Section 102.03 of the Revised Code 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 "public official or employee" includes, for purposes of R.C. 102.03, any person who is elected to an office of a governmental entity, see R.C. 102.01(B) and (C), and, thus, includes a member of a board of education. See Advisory Opinion No. 80-003. Further, "anything of value" is defined for purposes of R.C. 102.03 to include money, any promise of future employment, and every other thing of value. See R.C. 1.03, 102.01(G). Employment with an agency is deemed to be "anything of value" for purposes of R.C. 102.03. See Advisory Opinions No. 77-003, 77-006, and 82-002.

As discussed above, a member of the board of education is prohibited from accepting employment with the school district while serving as a member of the board. However, Division (D) of Section 102.03 further prohibits a school board member from voting, deliberating, discussing, or otherwise using or attempting to use his official authority or influence to secure for himself employment with the school district. See generally Advisory Opinions No. 80-007, 86-002, and 86-007. Division (E) of Section 102.03 prohibits a board member from merely soliciting employment with the board. He may not seek such employment from other board members, board employees, or other persons of authority or influence.

This is not to say that a former board member may never be hired as an employee of the board with which he once served. For example, a former board member may properly accept employment where the board considers him for a position, without his knowledge, and approaches him with an offer of employment. A former board member may seek employment where a sufficient amount of time has passed since his tenure on the board to indicate that he did not use his authority or influence while on the board to secure a position for himself. R.C. 102.03(D) and (E) do, however, prohibit a member of a board of education from taking action, formally or informally, to solicit or secure employment with the school district. He may not solicit, vote, deliberate, participate in discussions, or otherwise use or attempt to use the authority or influence of his office to secure, a position. Cf. Advisory Opinion No. 82-002 (R.C. 102.03(D) prohibits a public official or employee from seeking employment from firms that appear before or are regulated by his agency, unless he withdraws from consideration of any matter involving such firm). The application of the prohibitions of R.C. 102.03(D) and (E) is dependent upon the facts and circumstances of each individual case. See generally Advisory Opinions No. 77-003 and 77-006.

As a final matter, you have stated that the board is contemplating creating the position of assistant treasurer, and that a board member may be considered for employment in that position. R.C. 102.03(D) would prohibit the board member in question from voting, deliberating, participating in discussions, or otherwise using his official position or influence with regard to, creating the position or setting the attendant compensation in light of the fact that he is considering, or being considered for, employment in that position.

This advisory opinion is based on the facts presented and 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 the opinion of the Ohio Ethics Commission, and you are so advised, that: (1) Division (A)(3) of Section 2921.42 of the Revised Code prohibits a member of a board of education, for a period of one year after leaving office, from accepting employment with the board where such employment was authorized by the board while he was a member thereof; (2) Divisions (D) and (E) of Section 102.03 of the Revised Code

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prohibit a member of a board of education from soliciting, or using the authority or influence of his office to secure, employment with the board; and (3) Division (D) of Section 102.03 of the Revised Code prohibits a member of a board of education from voting, deliberating, participating in discussions, or otherwise using the authority or influence of his office to create a position with the school district or to set the compensation for such position where he is considering, or being considered for, employment in that position.

Merom Brachman

Merom Brachman, Chairman
Ohio Ethics Commission