



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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COLUMBUS, OHIO 43215-2940
(614) 466-7090

March 10, 1988

Informal Opinion 1988-INF-0310

Napoleon A. Bell, Counsel to the Governor
Office of the Governor
Statehouse
Columbus, Ohio 43266-0601

Dear Mr. Bell:

You have asked whether the Ohio Ethics Law and related statutes prohibit you from serving as a member of the board of trustees of Columbus State Community College, in light of the fact that you are employed as Counsel to the Governor. You state that last year, you were reappointed by the Governor to serve a six-year term on the board of trustees of Columbus State Community College (hereinafter referred to as Columbus State). You were then employed as Counsel to the Governor, and you wish to know whether you may continue to serve on the board of trustees of Columbus State.

Divisions (D) and (E) of Section 102.03 of the Revised Code read as follows:

- (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 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.

The term "public official or employee" is defined for purposes of R.C. 102.03 to include any person who is appointed to an office or is an employee of any department or authority of the state. See R.C. 102.01(B) and (C). You are, as Counsel to the Governor, a "public official or employee" for purposes of R.C. 102.03, and, thus, subject to the prohibitions of that section.

The Ethics Commission has held that a public official or employee is prohibited by R.C. 102.03 from holding another position if such position "could impair his independence of judgment with regard to his official decisions and responsibilities." Advisory Opinion No. 87-006. See also Advisory Opinions No. 77-006, 86-008, and 88-002.

In this instance, the trustees of a state community college district are appointed by the Governor, and are charged with the government of the district. R.C. 3358.03. They must, under R.C. 3358.04, "do all things necessary for the creation, proper maintenance, and successful and continuous operation of [the] state community college." See also R.C. 3358.08 (setting forth the powers and duties of the board of trustees, including owning and operating the state community college, and prescribing policies and exercising powers for the effective operation and efficient management of the college). On the other hand, the Governor is vested with "the supreme executive

power of this state." Ohio Constitution Art. III, §5. He is charged with the fiscal, operational, and administrative oversight of all state agencies, institutions, and instrumentalities. See Ohio Constitution Art. III, §§6, 7, 20; R.C. 107.03.

It is apparent that the Governor and his staff must consider and decide a tremendous variety of matters affecting all state and state-assisted agencies, institutions, and instrumentalities. As Counsel to the Governor, you must exercise your responsibilities objectively and impartially as to each agency, institution, and instrumentality. If you served as Counsel to the Governor and as a gubernatorially-appointed trustee of a particular state-assisted institution, you would be subject to a potential conflict of interest in carrying out the responsibilities of both positions. Therefore, you may not serve as both Counsel to the Governor and as a trustee of Columbus State Community College.

The conclusion of this informal opinion was approved by the Ethics Commission at its meeting on February 25, 1988. This opinion 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. You may also wish to contact the Attorney General's Office for a determination whether the two positions you wish to hold are compatible. If you have any questions, please call me.

Sincerely,

Melissa A. Warheit

Melissa A. Warheit
Executive Director

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