



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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April 7, 1988

Informal Opinion 1988-INF-0407-1

William Shkurti, Chairman
Ohio Student Loan Commission

Dear Mr. Shkurti:

You have asked whether the Ethics Law and related statutes would prohibit the Student Loan Commission (hereinafter referred to as "Commission") from contracting with Miami University (hereinafter referred to as "University") in order to retain a University employee as the acting executive director for the Commission. You state that the individual is currently serving as the University's Director of Institutional Relations, and his responsibilities include legislative relations and corporate and foundation relations. It is my understanding that the individual's responsibilities with the University do not include matters relating to the University's loan programs. The Commission wishes to enter into a personal services contract with the University in order to retain the individual as the Commission's acting executive director for a period of approximately thirty to sixty days. You state that the Commission would reimburse the University for the individual's salary, fringe benefits, and expenses. You further state that while the individual is working at the Commission, he would not perform any functions for the University and he would not make any decisions that would have a direct impact upon the University.

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 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.

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 institution, board, commission, or other instrumentality of the state. See R.C. 102.01(B) and (C). The Student Loan Commission is a statutorily created commission within state government. See R.C. 3351.05. Therefore, the Commission's executive director, who is the chief administrative official for the Commission, is a "public official or employee" for purposes of R.C. 102.03, and is subject to the prohibitions of that section, even though he may serve in that position pursuant to a personal services contract. See Ohio Ethics Commission Advisory Opinion No. 77-004.

It is apparent that any matter before the Student Loan Commission involving Miami University would be of such a character as to manifest a substantial and improper influence upon an individual who is regularly employed by the University, but who is serving as the Commission's executive director pursuant to a personal services contract between the University and the Commission. Therefore, the individual is prohibited by R.C. 102.03 from soliciting or using the authority or influence of his official position to secure any benefit or consideration for Miami University while he is the executive director of the Student Loan Commission. I also draw your attention to R.C. 2921.42(A)(1), which would prohibit the individual from authorizing, or using his official authority or influence as director of the Commission to secure authorization of, a public contract for any business associate, which would, in this instance, include Miami University.

It is my understanding that there are no matters involving the University currently before the Commission. However, if an issue should arise, the individual must refrain from participating in any such matter involving the University in order to avoid a potential violation of the Ethics Law, and the Commission has the responsibility to formally structure its operations so that the individual would be removed from any matter that should arise during his tenure that directly involves the University. For example, any audits, contracts, or other major administrative or policy matters between the Commission and the University should be handled directly by the Commission members themselves. More routine items could be handled by the Commission, or if it so chose, by a subordinate who had direct accountability to the Commission itself. See Advisory Opinion No. 85-002. Under no circumstances should the individual be performing any function for the University while acting as the executive director for the Commission.

You have stated in your letter that the Student Loan Commission must conduct biannual reviews of Miami University's compliance with the federal Guaranteed Student Loan Program and has the authority to limit, suspend, or terminate the University from participation in the program if it has not administered the program in compliance with federal law. You have further stated this review of the University will not commence until the fall of 1988, and you have indicated that no proceedings to limit, suspend, or terminate the University from the Guaranteed Student Loan Program have been initiated or are being contemplated by the Commission. Under the facts presented, it is anticipated that the individual will serve with the Commission for a short period of time, and will have terminated his service to the Commission by the time it must conduct a review of the University; the conclusions of this opinion are based on that assumption. If the individual is still acting as the executive director at the time that the University is to be reviewed, or if any other major issue should arise concerning the University, then you must contact the Ethics Commission for an examination of whether the arrangement you have proposed may properly continue.

Division (A)(1) of Section 2921.43 reads as follows:

- (A) No public servant shall knowingly solicit or accept and no person shall knowingly promise or give to a public servant either of the following:
 - (1) Any compensation, other than as allowed by divisions (G), (H), and (I) of section 102.03 of the Revised Code or other provisions of law, to

perform his official duties, to perform any other act or service in the public servant's public capacity, for the general performance of the duties of the public servant's public office or public employment, or as a supplement to the public servant's public compensation.

The term "public servant" is defined for purposes of R.C. 2921.43 to include any appointed officer or employee of the state, see R.C. 2921.01(A) and (B), and would, therefore, include the individual in question.

R.C. 2921.43(A) requires that any compensation paid to the individual to serve as the executive director of the Commission be allowed by law. You should, therefore, contact the Attorney General's Office for a determination whether the University has the statutory authority to compensate one of its employees for performing the duties of the Commission's executive director under the circumstances you have described.

You have asked about the application of R.C. 102.04. Division (B) of Section 102.04 prohibits a state official or employee from selling, except through competitive bidding, any goods or services to any department, instrumentality, board, or commission of the state. Division (D) provides an exception to this prohibition if the official or employee wants to sell goods or services to an agency other than the one with which he serves and if he files the statement specified in that Division.

The Ethics Commission has held that Division (B) of Section 102.04 does not apply to the provision of personal, professional services. See Advisory Opinion No. 88-001. Therefore, R.C. 102.04(B) would not prohibit an employee of the University from providing his professional services to the Commission, and the application of the exemption found in Division (D) would be unnecessary. The individual may, however, wish to voluntarily file the statement, which is described in Division (D) as follows:

(D) (2) . . .

The required statement shall contain the official's or employee's name and home address, the name and mailing address of the public agencies with which he serves and . . . that is purchasing or has agreed to purchase goods or services, and . . . a brief description of the goods or services to be purchased. The statement shall also contain the public official's or employee's declaration that he disqualifies himself for a period of two years from any participation as such public official or employee in any matter involving any public official or employee of the agency . . . to which goods or services are to be sold. The two-year period shall run from the date of the most recently filed statement regarding the agency . . . to which goods or services were to be sold. No person shall be required to file statements under this division with the same public agency regarding a particular matter more than once in a calendar year.

The statement must be filed with the Ethics Commission, the Student Loan Commission, and Miami University prior to the rendering of the services. R.C. 102.04(D). R.C. 102.04(E) states that no public official or employee who files a statement or is required to file a statement under Division (D) "shall knowingly fail to disqualify himself from any

participation as a public official or employee of the agency with which he serves in any matter involving any official or employee . . . of a public agency that purchased or agreed to purchase goods or service." If the individual does file a statement, he must disqualify himself for a period of two years after filing the statement from any participation as an employee of the University in any matter involving any official or employee of the Commission.

This informal advisory was approved by the Ethics Commission at its meeting on April 7, 1988. It 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. If you have any questions, please contact me.

Sincerely,

Melissa A. Warheit

Melissa A. Warheit
Executive Director

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