



OHIO ETHICS COMMISSION
THE ATLAS BUILDING
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September 1, 1988

Informal Opinion 1988-INF-0901-1

Richard C. Murray
Office of the Governor
Statehouse
Columbus, Ohio 43266-0601

Dear Rich:

You have asked whether the Ohio Ethics Law and related statutes would prohibit a university student who receives a stipend, entitlement, or financial assistance from the university from serving as a trustee of the university under the provisions of Am. H.B. 34.

Am. H.B. 34, which became effective on July 26, 1988, was enacted to add two students to the boards of trustees of state universities. Student representatives are appointed by the Governor, with the advice and consent of the Senate, and serve two-year terms. Am. H.B. 34 also provides the following language with regard to each university board of trustees:

The student members of the board of trustees . . . have no voting power on the board. Student members shall not be considered as members of the board in determining whether a quorum is present. Student members shall not be entitled to attend executive sessions of the board.

In determining whether a student who receives assistance or compensation from the university may serve on the board of trustees, the threshold question is whether student trustees are public officials for purposes of Chapter 102. and Section 2921.42 of the Revised Code, since these statutory provisions generally restrict public officials from receiving compensation (other than for performing their official duties), grants, and loans from the instrumentality with which they serve. See, e.g., Ohio Ethics Commission Advisory Opinions No. 87-003 and 88-001. Chapter 102. is generally applicable to any "public official or employee," which includes any person who is elected or appointed to an office or is an employee of any institution, board, authority, or other instrumentality of the state. See R.C. 102.01(B) and (C). Section 2921.42 is applicable to any "public official," which includes any elected or appointed officer, or employee, or agent of the state. See R.C. 2921.01(A).

In Advisory Opinion No. 85-005, the Ethics Commission held that a member of the Technical Advisory Committee to the Coal Development Office is not a public official or employee for purposes of R.C. Chapter 102. or R.C. 2921.42. The opinion states that in determining that a position is a public office, the "essential requirement" is that the law confers on the position certain duties that involve the exercise of the sovereign power of the state. In explaining what is meant by "sovereign power," the opinion quotes the Ohio Supreme Court case of State ex rel. Landis v. Butler, 95 Ohio St. 157 (1917), as follows:

If specific statutory independent duties are imposed upon an appointee in relation to the exercise of the police powers of the state, if the appointee is invested with the independent power in the disposition of public property or with power to incur financial obligations upon the part of the county or

state, if he is empowered to act in those multitudinous cases involving business or political dealings between individuals and the public, wherein the latter must necessarily act through an official agency, then such functions are a part of the sovereignty of the state. Id. at 160.

The opinion also cites Advisory Opinion No. 75-004 which states: "it becomes apparent that 'sovereign power' is a concept meant to imply that the exercise of duty entrusted to one by virtue of statute or some other public authority. These duties . . . involve some discretionary, decision-making qualities." The Ethics Commission found in Advisory Opinion No. 85-005 that the role of the Technical Advisory Committee was merely advisory and did not involve the exercise of the sovereign power of the state, and therefore, members of the Committee were not public officials for purposes of Chapter 102. or R.C. 2921.42.

The boards of trustees of state universities are statutorily empowered to exercise a variety of decision-making powers and have the independent authority under statute to incur financial obligations on the part of, and to otherwise bind, the state. See, e.g., R.C. 3335.03, 3335.10, 3339.05, 3343.05, 3344.04, Chapter 3345. However, student representatives on the board of trustees do not enjoy the full range of powers which are exercised by the other trustees. Student members have no voting power, are not entitled to attend executive sessions, and are not considered members for purposes of establishing a quorum. While student members serve to represent, and provide important input as to, the views and interests of students on matters before the trustees, they act in an advisory, rather than a decision-making capacity, and do not have the authority to exercise the sovereign power of the state. Therefore, student representatives are not public officials for purposes of Chapter 102. or Section 2921.42 and are not prohibited by these provisions from being appointed to the board of trustees under Am. H.B. 34 because they receive a stipend, entitlement, or financial assistance from the university.

I note that Section 3345.34, as enacted by Am. H.B. 34, prohibits a student trustee from using his position to influence any grade or evaluation of his performance by a faculty member or other university employee and prohibits a faculty member or employee from conferring any favor, advantage, preference, or other benefit on a student trustee because of his trusteeship. Although a student trustee is not a public official for purposes of Chapter 102. or Section 2921.42, he should refrain from participating in discussions relating to any matter from which he could derive a direct, personal benefit, in order to avoid the appearance of impropriety.

This informal staff opinion was approved by the Ethics Commission at its meeting on September 1, 1988. The 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. This informal opinion is based on an interpretation of the Ohio Ethics Law, and does not purport to interpret other laws or rules. If you have questions, or wish to request a formal advisory opinion from the Commission, please contact me.

Very truly yours,



Melissa A. Warheit
Executive Director