



OHIO ETHICS COMMISSION

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August 11, 1995

Informal Opinion 1995-INF-0811-2

Edward J. Demske, Vice President
Finance and Business Affairs
Miami University
[REDACTED]

Dear Mr. Demske:

You have asked whether the Ohio Ethics Law and related statutes prohibit Dennis E. Deahl, who is employed by Miami University (University) as the Director of Personnel and Benefit Services, from serving on the Board of Trustees of the Delta Dental Plan of Ohio (Delta), in light of the fact that the University has its dental insurance coverage through Delta.

As explained below, Division (A)(4) of R.C. 2921.42 prohibits Dr. Deahl from serving on Delta's board of trustees unless he can meet the exception provided by R.C. 2921.42 (C). If the underlying public contract between Delta and the University could not have been entered into without Mr. Deahl's approval, as the University's Director of Personnel and Benefit Services, then R.C. 2921.42 (A)(3) prohibits Mr. Deahl from serving on Delta's board of trustees unless the contract between Delta and the University was competitively bid and Delta submitted the lowest and best bid.

If Mr. Deahl can meet these requirements, then Division (A)(1) of R.C. 2921.42 and Division (D) of R.C. 102.03 prohibit Mr. Deahl from voting, discussing, deliberating, or otherwise authorizing or employing the authority or influence of his office, formally or informally, to secure authorization of a renewal or modification of the current contract between the University and Delta. In order to receive compensation and reimbursement for serving as a member of Delta's board of trustees, R.C. 102.03 (E) also requires that Mr. Deahl withdraw from all matters pertaining to Delta. Furthermore, R.C. 102.04 (A) and R.C. 102.03 (A) impose restrictions on Mr. Deahl's representation of Delta before public agencies. Finally, R.C. 102.03 (B) prohibits Mr. Deahl from disclosing confidential information which he acquired as a University employee to Delta, or any other person or entity, and from using such information, without appropriate authorization.

You have provided the Ethics Commission with information pertaining to Mr. Deahl's position on Delta's board of trustees. In summary, Mr. Deahl was offered an appointment to Delta's board of trustees in February 1995, which he would hold until 1997. For his services as a member of the board of trustees, Mr. Deahl would receive one hundred fifty dollars per month as a retainer and one hundred fifty dollars as a stipend for attending regularly scheduled meetings. He would also be reimbursed for necessary travel and hotel accommodations.

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You contend that, because the University has its dental coverage through Delta, it is to the University's advantage to have Mr. Deahl serve on Delta's board of trustees, since he could impart the University's point of view on coverage and service issues.

Your question requesting guidance under Ohio Ethics Law and related statutes involves the application of several different provisions. The first to be examined is Section 2921.42 (A)(4).

R.C. 2921.42 (A)(4) - Interest in a Public Contract

Division (A)(4) of Section 2921.42 of the Revised Code reads:

- (A) No public official shall knowingly:
 - (4) Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which he is connected.

The term "public official" is defined, for purposes of R.C. 2921.42 in R.C. 2921.01 (A), to include any employee of the state. A state university is an instrumentality of the state. R.C. 3345.011 ("state university" means a public institution of higher education which is a body politic and corporate"); Wolf v. Ohio State University Hosp., 170 Ohio State 49 (1959). Therefore, as the University's Director of Personnel and Benefit Services, Mr. Deahl is a "public official" for purposes of R.C. 2921.42. Ohio Ethics Commission Advisory Op. No. 83-003.

The term "public contract" is defined for purposes of R.C. 2921.42 in Division (G)(1)(a) of that section and includes the purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of "the state or any of its political subdivisions, or any agency or instrumentality of either." R.C. 2921.42 (G). The purchase of, or a contract for the purchase of, dental insurance coverage for University personnel by a state university falls within this definition. Advisory Op. No. 88-008. Accordingly, Division (A)(4) of Section 2921.42 prohibits Mr. Deahl from having an interest in the profits or benefits of the University's contract with Delta for dental coverage for its personnel.

The Ethics Commission has held that a public official has a prohibited "interest" in a public contract if the official has a definite and direct interest, of either a pecuniary or fiduciary nature, in the contract. Advisory Op. No. 89-004. As a member of Delta's board of trustees,

Mr. Deahl has a definite and direct fiduciary interest in Delta's contracts, including Delta's provision of dental insurance coverage to the University's personnel. See Advisory Ops. No. 78-006, 85-009, 88-008, 89-006, and 90-003. In addition, Mr. Deahl has a direct pecuniary interest in Delta's contracts because of the compensation and reimbursement that he receives for his service on Delta's board of trustees. Therefore, R.C. 2921.42 (A)(4) prohibits Dr. Deahl from serving on Delta's board of trustees.

R.C. 2921.42 (C) - Exception to R.C. 2921.42 (A)(4)

Division (C) of Section 2921.42 does, however, provide an exception to the prohibition of Division (A)(4) which states:

- (C) This section does not apply to a public contract in which a public servant, member of his family, or one of his business associates has an interest, when all of the following apply:
 - (1) The subject of the public contract is necessary supplies or services for the political subdivision or governmental agency or instrumentality involved;
 - (2) The supplies or services are unobtainable elsewhere for the same or lower cost, or are being furnished to the political subdivision or governmental agency or instrumentality as part of a continuing course of dealing established prior to the public official's becoming associated with the political subdivision or governmental agency or instrumentality involved;
 - (3) The treatment accorded the political subdivision or governmental agency or instrumentality is either preferential to or the same as that accorded other customers or clients in similar transactions;
 - (4) The entire transaction is conducted at arm's length, with full knowledge by the political subdivision or governmental agency or instrumentality involved, of the interest of the public official, member of his family, or business associate, and the public official takes no part in the deliberations or decision of the political subdivision or governmental agency or instrumentality with respect to the public contract.

Under R.C. 2921.42 (C), all of the following must be met: (1) the subject of the contract is necessary supplies or services; (2) the supplies or services are unobtainable elsewhere for the same or lower cost, or are furnished as part of a continuing course of dealing established prior to the public official's association with the public agency; (3) the treatment accorded the public agency is either preferential to or the same as that accorded other customers in similar transactions; and (4) the entire transaction is conducted at arms length with full knowledge of the public official's interest, and the public official takes no part in any discussion or decision with respect to the contract.

The facts and circumstances of each particular situation will determine if the exception provided by R.C. 2921.42 (C) applies. Advisory Op. No. 82-007. The criteria are strictly construed against the public official, and the official bears the burden of showing that the exemption applies. See Advisory Ops. No. 83-004 and 88-008.

Division (C)(2)

Division (C)(2) of Revised Code Section 2921.42 is of particular note in this situation.

One means of meeting the criterion of R.C. 2921.42 (C)(2) is by demonstrating that the services under the public contract are being furnished as part of continuing course of dealing established prior to an individual becoming associated with the public agency. The Ethics Commission has held that Division (C)(2) describes a course of dealing established prior to a public official taking office, rather than prior to his obtaining an interest in the public contracts of a firm. Advisory Op. No. 84-006. A public contract that exists at the time an individual takes public office will fall within the continuing course of dealing exception, and the performance of the contract may be completed. Id. See also Advisory Op. No. 88-008. However, as stated above, Mr. Deahl has been asked to become a member of Delta's board of trustees after Delta had contracted with the University to supply dental coverage for the University's personnel. Therefore, Mr. Deahl does not meet the necessary criteria to establish the continuing course of dealing exception for purposes of R.C. 2921.42 (C)(2).

Division (C)(2) can also be met if there is an objective showing that the supplies or services that are being furnished under the contract are unobtainable elsewhere for the same or lower cost. Mr. Deahl must demonstrate that he is in compliance with this requirement. See Advisory Ops. No. 84-006 and 90-003. One means of demonstrating that goods or services are unobtainable elsewhere for the same or lower cost is through competitive bidding. If, at the time the University selected Delta to supply dental coverage for the University's personnel, there was an open and fair competitive bidding process, whereby Delta submitted the lowest bid, then this fact would indicate that this requirement has been met. See Advisory Ops. No. 86-002 and 90-003.

However, the Ethics Commission has held that other factors must be considered in order to determine whether the "unobtainable elsewhere" standard of R.C. 2921.42 has been met, such as the availability and adequacy of notice to potential bidders, the openness and fairness of the bidding process, the objectivity and validity of the bid specifications, and the conditions of the market. See Advisory Ops. No. 83-004, 88-001, and 90-003. Also, as explained below, competitive bidding of the contract between Delta and the University may be required because of the prohibitions imposed by R.C. 2921.42 (A)(3).

R.C. 2921.42 (A)(3) - Position of Profit in a Public Contract

R.C. 2921.42 (A)(3) reads:

(A) No public official shall knowingly do any of the following:

(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, unless the contract was let by competitive bidding to the lowest and best bidder.

In Advisory Opinion No. 92-013, the Ethics Commission held that an "interest" that is prohibited by R.C. 2921.42 (A)(4) may be either pecuniary or fiduciary in nature, but that the word "profit" in R.C. 2921.42 (A)(3) connotes only a pecuniary gain or benefit. See also Advisory Op. No. 93-001. The Commission explained in Advisory Opinion No. 92-013:

"[f]or example, a public official may be deemed to have an "interest" in a public contract, but not "profit" from the public contract, if his interest is only fiduciary, such as serving as an uncompensated officer or trustee of a nonprofit corporation."

As explained above, because Mr. Deahl is compensated and reimbursed for his service on Delta's board of trustees, his "interest" in the contract between Delta and the University is both pecuniary and fiduciary.

The Ethics Commission has held that, for purposes of R.C. 2921.42 (A)(3), a public official is deemed to profit from a public contract where: (1) the establishment or operation of the company with which he serves is dependent upon the award of the public contract; (2) the creation or continuation of the public official's position with the company with which he serves is dependent upon the award of the contract; (3) the proceeds from the contract would be used

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by the company to compensate the official or serve as a basis for the official's compensation; or (4) he would otherwise profit from the contract. See Advisory Ops. No. 87-004 and 88-008.

In the instant situation, Mr. Deahl would receive one hundred fifty dollars per month as a retainer for his services as a member of the board of trustees and one hundred fifty dollars as a stipend for attending regularly scheduled meetings. He would also be reimbursed for any necessary travel and hotel accommodations. Because Mr. Deahl would be compensated and reimbursed for his services, he is deemed to occupy a position of profit in Delta's public contract for purposes of R.C. 2921.42 (A)(3).

The Ethics Commission has held that a public official will be deemed to have authorized a public contract, for purposes of R.C. 2921.42 (A)(3), where the contract could not have been awarded without the official's approval. See Advisory Ops. No. 87-004, 88-003, and 88-008. You have not stated whether Mr. Deahl, in his capacity as the University's Director of Personnel and Benefit Services, is required to act upon the award of a public contract to a company that will provide health care benefits to the University's employees. If, however, the public contract between Delta and the University could not have been entered into without Mr. Deahl's approval as the University's Director of Personnel and Benefit Services, then R.C. 2921.42 (A)(3) prohibits Mr. Deahl from serving on Delta's board of trustees unless the contract between Delta and the University was competitively bid and Delta submitted the lowest and best bid.

Participation in Matters Affecting Delta

You have stated that because the University has its dental coverage through Delta, it is to the University's advantage to have Mr. Deahl serve on Delta's board of trustees since he could impart the University's point of view on coverage and service issues. However, the result of the application on R.C. 2921.42 (A)(1) and R.C. 102.03 (D), is that Mr. Deahl would be prohibited in his public position from participating in matters affecting the contract between Delta and the University. The prohibition imposed by R.C. 2921.42 (A)(1) will be addressed first.

R.C. 2921.42 (A)(1) - Securing a Public Contract for a Business Associate

Assuming that the criteria of R.C. 2921.42 (C) and the requirements of R.C. 2921.42 (A)(3), if applicable, can be met permitting Mr. Deahl to serve on Delta's board of trustees when the University contracts with Delta for its dental coverage, Mr. Deahl is subject to Division (A)(1) of Section 2921.42, which provides that a public official shall not 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.

R.C. 2921.42 (A)(1) prohibits a public official from authorizing or employing the authority or influence of his office to secure authorization of a public contract in which either the public official or his business associate has an interest.

As explained above, Mr. Deahl would have an interest in Delta's contracts for purposes of R.C. 2921.42. Furthermore, Delta would become Mr. Deahl's business associate for purposes of R.C. 2921.42 (A)(4). See Advisory Op. No. 86-002 (a business association is created whenever persons join together to pursue a common business purpose). Therefore, R.C. 2921.42 (A)(1) prohibits Mr. Deahl from voting, discussing, deliberating, or otherwise authorizing, or employing the authority or influence of his office, formally or informally, to secure authorization of a renewal or modification of the current contract between the University and Delta.

Even if the renewal or modification of the current contract between the University and Delta were to be awarded through competitive bidding, R.C. 2921.42 (A)(1) prohibits Mr. Deahl from participating in the bid process. See also R.C. 2921.42 (C)(4) (set forth above). R.C. 2921.42 (A)(1) also prohibits Mr. Deahl from using his authority or influence over other university personnel or public officials or employees to secure authorization of a public contract for Delta. Advisory Op. No. 89-006.

R.C. 102.03 (D) and (E) - Securing or Accepting Improper Things of Value

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.

R.C. 102.01 (B) defines a "public official or employee," for purposes of R.C. Chapter 102., as any person who is appointed to an office or is an employee of any public agency. R.C. 102.01 (C) defines the term "public agency" to include any institution or instrumentality of the state.

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As an employee of a state university, Mr. Deahl is a public official or employee for purposes of Chapter 102, and is subject to the provisions therein. Advisory Op. No. 77-003.

R.C. 102.03 defines the term "anything of value" for purposes of R.C. 102.03 to include money and every other thing of value. R.C. 102.01(G). A definite pecuniary benefit to a person or a business is considered to be a thing of value under R.C. 102.03 (D) and (E). See Advisory Ops. No. 79-008, 80-003, 85-006, 85-011 and 86-007. The compensation and reimbursement that Mr. Deahl receives from Delta for his service on Delta's board of trustees falls under the definition of "anything of value."

The Ethics Commission has held that R.C. 102.03 (D) prohibits a public official or employee from using the authority or influence of his official position to secure anything of value, for either himself or his business associate, if the thing of value is of an improper character. See Advisory Ops. No. 80-007, 85-006, 86-003, 86-007, 88-004, 89-006, and 90-008. R.C. 102.03 (E) prohibits a public official or employee from soliciting or receiving an improper thing of value, and does not require that he use the authority or influence of his position to secure it. See Advisory Ops. No. 86-011 and 89-006.

A thing of value is considered to be of an improper character for purposes of R.C. 102.03 (D) and (E) where it is secured from a party that is interested in matters before, regulated by, or doing or seeking to do business with the public agency with which the official or employee serves, or where the thing of value could impair the official's or employee's objectivity and independence of judgment with respect to his official actions and decisions for the public agency with which he serves or is employed. See Advisory Ops. No. 79-002, 80-004, 84-009, 84-010, 87-006, 87-009, 89-006, 90-012, and 92-009.

Compensation for Service on Delta's Board of Trustees

It is apparent, because the University contracts with Delta to provide dental services to the University's personnel, that Delta is "doing or seeking to do business" with the University. The Ethics Commission has explained that a public official or employee who is charged with the responsibility to render decisions for his public agency must exercise his duties without hindrance by any improper influence. Advisory Op. No. 89-010. If a public official or employee receives a thing of value from a vendor, then the official or employee would be subject to impaired objectivity and independence of judgment with regard to matters affecting the vendor. *Id.* In this instance, the compensation and reimbursement that Mr. Deahl receives from Delta for his service on its board of trustees could impair his objectivity and independence of judgment with regard to decisions he would be required to make, as the Director of Personnel and Benefit Services, on subsequent matters concerning Delta. Therefore, R.C. 102.03 (E) prohibits Mr. Deahl from receiving compensation or reimbursement from Delta for his service on Delta's board of trustees.

However, the Ethics Commission has held, in some circumstances, a public official or employee is not prohibited from holding a private outside position provided that he withdraws from consideration of matters that would pose a conflict of interest. See Advisory Ops. No. 89-006 (Ohio Department of Mental Health officials and employees accepting employment from colleges or universities that receive grants from ODMH), 89-010 (a Department of Agriculture employee selling services to a state institution that is regulated by the Department of Agriculture), and 90-002 (a Department of Agriculture employee owning and operating a plant that is regulated by the Department of Agriculture). However, the Commission has held that such a withdrawal: (1) may not interfere with the official's or employee's performance of his duties; and (2) must be approved by the appropriate officials at his public agency. Id.

In other circumstances, the Ethics Commission has recognized that a public official's or employee's private financial interests give rise to an insurmountable conflict of interest and divide loyalties between his public duties and private interests to the extent that R.C. 102.03 (D) and (E) prohibit him from holding a certain outside private position or employment. See Advisory Ops. No. 81-007 (an employee of a county recorder's office may not conduct private title searches), 83-007 (employees of the Board of Cosmetology may not sell products to regulated parties), 88-002 (the President of the Controlling Board may not hold employment with a state agency), 92-008 (a township clerk may not be an employee of a bank that receives township funds), and 92-009 (the Executive Director of the Ohio State Barber Board may not own and operate a barber shop).

The issue becomes whether Mr. Deahl may withdraw from matters pertaining to Delta in order to receive compensation and reimbursement for his service on Delta's board of trustees.

Generally, the Ethics Commission has held that a high-level public official or employee, charged with supervising the activity of employees, discharges a crucial and unique role in assisting his public agency in the performance of its duties from which he cannot withdraw without interfering with the performance of his duties. Advisory Op. No. 92-009. See also Advisory Op. No. 89-015 (since a city law director is ultimately responsible for the actions of his subordinates it is impossible for him to abstain from any case in which the city is a party even though one of his subordinates may handle the daily details of the case).

In the instant situation, Mr. Deahl is the University's Director of Personnel and Benefit Services. In light of the fact that the University contracts with Delta for the provision of dental services for its personnel, R.C. 102.03 (D) and (E) prohibit Mr. Deahl from participating in any matter involving Delta, including the supervision of university employees who would be in contact with Delta regarding Delta's provision of dental services to the University's personnel. Withdrawal by Mr. Deahl from matters which pertain to Delta would require that such matters

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be handled by someone who is superior to, and acts as an independent and objective decision-maker upon, Mr. Deahl in his capacity as Director of Personnel and Benefit Services. Advisory Op. No. 90-010. Furthermore, Mr. Deahl's withdrawal on matters that pertain to Delta must be approved by the appropriate officials at the University.

R.C. 102.03 (D) - Securing a Thing of Value for a Business Associate

R.C. 102.03 (D) prohibits a public official or employee from using the authority or influence of his official position to secure anything of value, for either himself or his business associates, if the thing of value is of an improper character. As explained above, Mr. Deahl and Delta are business associates. See Advisory Ops. No. 88-004, 88-005, 90-008, and 92-003 (a "business association," for purposes of R.C. 102.03 (D) is created whenever persons or entities act together to pursue a common business purpose.) Mr. Deahl's business associate, Delta, derives a definite and direct pecuniary benefit from the sale of dental service to the University. R.C. 102.03 (D) and (E) prohibit Mr. Deahl from voting, discussing, deliberating, or otherwise authorizing, or employing the authority or influence of his office, formally or informally, to secure authorization of a renewal or modification of the current contract between the University and Delta. See R.C. 2921.42 (A)(1), described above.

R.C. 102.04 (A) - Compensated Representation Before State Agencies

Your attention is also directed to R.C. 102.04 (A), which reads:

Except as provided in division (D) of this section, no person elected or appointed to an office of or employed by the general assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts, shall receive or agree to receive directly or indirectly compensation other than from the agency with which he serves for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter that is before the general assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts.

R.C. 102.04 (A) prohibits a state official or employee from receiving, directly or indirectly, compensation, except from the agency with which he serves, for personally rendering any service in any matter before the General Assembly, or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts. See 102.01 (A) (defining the term "compensation" for purposes of R.C. 102.04 as "money, thing of value, or financial benefit").

Exception Provided by R.C. 102.04 (D) and (E)

Division (D) of Section 102.04 of the Revised Code provides an exception to the prohibition of R.C. 102.04 (A) for state employees and officials who are appointed to a non-elective state office. See Ohio Ethics Commission Advisory Ops. No. 78-007, 82-006, 89-006, 90-009, and 92-006. R.C. 102.04 (D) and (E) read as follows:

- (D) A public official who is appointed to a nonelective office or a public employee shall be exempted from division (A), (B), or (C) of this section if both of the following apply:
- (1) The agency to which the official or employee wants to sell the goods or services, or before which the matter that involves the rendering of his services is pending, is an agency other than the one with which he serves;
 - (2) Prior to rendering the personal services or selling or agreeing to sell the goods or services, he files a statement with the appropriate ethics commission, with the public agency with which he serves, and with the public agency before which the matter is pending or that is purchasing or has agreed to purchase goods or services.

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 before which the matter is pending or that is purchasing or has agreed to purchase goods or services, and a brief description of the pending matter and of the personal services to be rendered or 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 before which the present matter is pending or 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 before which the matter was pending or to which the 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.

- (E) No public official or employee who files a statement or is required to file a statement under division (D) of this section 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 an agency before which a matter for which he rendered personal services was pending or of a public agency that purchased or agreed to purchase goods or services.

In order to meet the exception provided by R.C. 102.04 (D) two conditions must be met: (1) the representation provided by the official or employee must be before an agency other than his own; and (2) prior to rendering the personal services, the official or employee must file a 102.04 (D) Statement, which describes the personal services to be rendered and other information.

A state official or employee who represents a party before a state agency other than his own must file the 102.04 (D) Statement with: (1) the Ohio Ethics Commission; (2) his own public agency; and (3) the public agency before which he will be rendering personal services. The official or employee must declare on his 102.04 (D) Statement that he will disqualify himself, for a period of two years from the date the statement is filed, from participation as an official or employee in any matter involving any public official or employee of the public agency before which the matter is pending. Division (E) of Section 102.04 emphasizes that a official or employee who files, or is required to file a 102.04 (D) Statement, must disqualify himself from any participation as a official or employee in any matter involving any official or employee of the agency before which the matter on which he rendered personal services was pending. Advisory Opinion No. 92-006.

R.C. 102.04 (A) prohibits Mr. Deahl from receiving compensation from Delta for personally representing or personally rendering any service in any case, proceeding, application, or other matter that is before the General Assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts, unless he complies with the provisions of R.C. 102.04 (D) and (E), as explained above. Under no circumstances may Mr. Deahl receive compensation from Delta for personally rendering services before the University.

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In addition, R.C. 102.03 (A) prohibits Mr. Deahl, while serving as a University employee and for one year thereafter, from representing Delta before any public agency on any matter in which he personally participated while serving as the University's Director of Personnel and Benefit Services. Advisory Op. No. 88-008.

R.C. 102.03 (B) - Release of Confidential Information

As a final matter, Division (B) of R.C. 102.03 reads:

No present or former public official or employee shall disclose or use, without appropriate authorization, any information acquired by him in the course of his official duties which is confidential because of statutory provisions, or which has been clearly designated to him as confidential when such confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary to the proper conduct of government business.

Pursuant to this section, Mr. Deahl is prohibited from disclosing confidential information, which he acquired in his position as the University's Director of Personnel and Benefit Services to Delta or any other person or entity, and from using such information without appropriate authorization. Advisory Op. No. 89-006. This prohibition has no time limit, and is therefore applicable during Mr. Deahl's public service, and continues after he leaves public service. Id.

Conclusion

As explained above, Division (A)(4) of R.C. 2921.42 prohibits Mr. Deahl from serving on Delta's board of trustees unless he can meet the exception provided by R.C. 2921.42 (C). If the public contract between Delta and the University could not have been entered into without Mr. Deahl's approval as the University's Director of Personnel and Benefit Services, then R.C. 2921.42 (A)(3) prohibits Mr. Deahl from serving on Delta's board of trustees unless the contract between Delta and the University was competitively bid and Delta submitted the lowest and best bid.

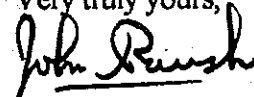
If Mr. Deahl can meet these requirements, then Division (A)(1) of R.C. 2921.42 and Division (D) of R.C. 102.03 prohibit Mr. Deahl from voting, discussing, deliberating, or otherwise authorizing or employing the authority or influence of his office, formally or informally, to secure authorization of a renewal or modification of the current contract between the University and Delta. In order to receive compensation and reimbursement for serving as a member of Delta's board of trustees, R.C. 102.03 (E) requires that Mr. Deahl withdraw from all matters pertaining to Delta. Furthermore, R.C. 102.04 (A) and R.C. 102.03 (A) impose restrictions on the Mr. Deahl's representation of Delta before public agencies. Finally,

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R.C. 102.03 (B) prohibits Mr. Deahl from disclosing confidential information, which he acquired as a University employee, to Delta or any other person or entity, and from using such information without appropriate authorization.

This informal advisory opinion was approved by the Ethics Commission at its meeting on August 11, 1995. 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 and does not purport to interpret other laws or rules. If you have any further questions, please feel free to contact this Office again.

Very truly yours,



John Rawski
Staff Attorney