



OHIO ETHICS COMMISSION

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March 6, 1998

Informal Opinion 1998-INF-0306

Pamela S. Bossart, Trustee
Plain Township

Dear Ms. Bossart:

In a letter received by the Ohio Ethics Commission on December 4, 1997, you have asked whether the Ethics Law and related statutes prohibit you, as a newly elected trustee of Plain Township, from participating in or voting on matters involving your husband's employment with the township, and general budget appropriations to the township Road Department. Generally, the Ethics Law does not prohibit your family members from continuing to be employed by the township simply because you have become one of the township's trustees. The Ethics Law can, however, restrict the actions which you, as a trustee, may take with respect to a contract in which one of your family members has an interest.

For the reasons explained below, R.C. 2921.42(A)(1) and R.C. 102.03(D) prohibit you from authorizing, or employing the authority or influence of your office to secure the authorization of, your husband's individual contract of employment, and from voting, discussing, deliberating, or otherwise participating in any matter or decision which would affect the continuation, implementation, or terms and conditions of your husband's contract of employment. R.C. 2921.42(A)(1) and R.C. 102.03(D) also prohibit you from voting, discussing, deliberating, or otherwise participating in any part of the township's decision-making process authorizing or approving your husband's individual contract of employment, and from exercising the power and influence of your public office to affect the township's decision-making process regarding your husband's individual contract of employment.

In this matter, however, your husband's individual contract of employment with the township Road Department is subject to the terms and conditions of a collective bargaining agreement that exists between Plain Township and the township Road Department. For the reasons explained below, R.C. 2921.42(A)(1) does not prohibit you from voting to ratify or reject the collective bargaining agreement unless your husband is an officer, board member, or member of the negotiating team of the labor organization. Further, R.C. 102.03(D) does not prohibit you from participating in or voting on a general budget appropriation which includes money to fund your husband's compensation and benefits provided that your husband's compensation and benefits have been established independently of the appropriation (most likely in the collective bargaining agreement) and cannot be altered during the consideration of the appropriation. Also, R.C. 2921.42(A)(1) and R.C. 102.03(D) do not prohibit you from signing your husband's payroll checks, again provided that your husband's compensation has been established independently of the appropriation and cannot be altered. Finally, R.C. 102.03(D) does not prohibit you from

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participating in or voting on general budget appropriations for the township Road Department provided that the appropriations are for the department's general accommodations, supplies, and operating expenses and do not provide a definite and particular personal benefit to your husband.

Facts

You have explained that you are a newly elected Plain Township trustee. You also have stated that your husband has been employed by the township for the past two (2) years as one of the fifteen (15) members of the Plain Township Road Department. Finally, you have added that your husband's employment is subject to the terms and conditions of a collective bargaining agreement that exists between Plain Township and the township Road Department.

Prohibitions Against Authorizing a Family Member's Individual Employment Contract-- R.C. 2921.42(A)(1) and R.C. 102.03(D)

You have asked whether the Ohio Ethics Law and related statutes prohibit you, as a Plain Township trustee, from participating in or voting on matters involving your husband's employment with the township. The section of the law that is most applicable to your question is R.C. 2921.42(A)(1), which provides that no public official shall 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.

The term "public official" is defined in R.C. 2921.01(A) for purposes of R.C. 2921.42 to include any elected or appointed officer of a political subdivision of the state. The Ohio Ethics Commission has previously held that a township trustee is a "public official" under R.C. 2921.01(A). See Ohio Ethics Commission Advisory Opinions No. 84-003 and 84-006.

The term "public contract" is defined in R.C. 2921.42(G)(1)(a) for purposes of R.C. 2921.42 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. R.C. 2921.42(G)(1)(a) expressly includes "the employment of an individual by the state, any of its political subdivisions, or any agency or instrumentality of either" within its definition of a "public contract." See also Adv. Ops. No. 90-010 and 97-004; Walsh v. Bollas (Lake App. 1992), 82 Ohio App. 3d 588 (holding that "public contract" under R.C. 2921.42(A)(1) includes public employment); In re Removal of Steed, unreported, Case No. 1909 (Lawrence App., July 27, 1989) (same). Moreover, the Commission has concluded that such employment is a public contract regardless of whether it is full-time, part-time, temporary, permanent, classified, unclassified, or non-civil service in nature. See Adv. Op. No. 90-010. Therefore, your husband's individual contract of employment with Plain Township is a "public contract" under R.C. 2921.42.

R.C. 2921.42(A)(1) prohibits a public official from authorizing, or employing the authority or influence of his office to secure the authorization of, any public contract, including

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employment, in which "a member of his family" has an interest. See Adv. Ops. No. 90-010, 92-012, and 97-004. For purposes of R.C. 2921.42, a "member of his family" has been defined by the Commission as including, but not limited to, the public official's spouse, children (whether dependent or not), parents, grandparents, grandchildren, and siblings. See Adv. Ops. No. 80-001, 90-010, 92-012, and 97-004. The Commission has also included in this definition any other persons related to the official by blood or marriage who reside in the same household as the official. Id.

Therefore, R.C. 2921.42(A)(1) prohibits you from authorizing, or employing the authority or influence of your office to secure authorization of, the employment of your husband by the political subdivision with which you serve. See Adv. Ops. No. 85-015, 90-010, 92-012, and 97-004. In this situation, you have explained that your spouse is already employed by the township. It should be noted that the Commission has further explained that this prohibition extends beyond the initial hire of a family member and prohibits a public official from participating in any matter or decision that would affect the continuation, implementation, or terms and conditions of her family member's employment. See Adv. Ops. No. 82-003, 89-005, 92-012, and 97-004.

The exact actions prohibited by R.C. 2921.42(A)(1) turn on the Commission's interpretations of the terms "authorize" and "employ the authority or influence of his office." The Commission has determined that a public official will be deemed to have "authorized" a public contract, for the purposes of R.C. 2921.42, where the contract could not have been awarded without the public official's approval. See Adv. Ops. No. 87-004, 88-008, 90-010, and 92-012. Accordingly, R.C. 2921.42(A)(1) prohibits a public official from voting, discussing, deliberating, or otherwise participating in any part of his public agency's decision-making process authorizing or approving an individual contract of employment for a member of his family. See Adv. Ops. No. 89-005, 90-010, 92-012, and 97-004. Further, the Commission has determined that R.C. 2921.42(A)(1) prohibits a public official from using "the authority or influence of his office" by exercising the power and influence inherent in the position and prestige of his public office or employment to affect the decision-making process regarding the employment of a family member even if the official abstains subsequently from voting and participating in official proceedings. See Adv. Ops. No. 90-012 and 97-004.

The Commission has explained that the prohibitions contained in R.C. 2921.42(A)(1) do not create a "no relatives policy":

R.C. 2921.42(A)(1) does not prohibit a family member of a public official from being employed by the same political subdivision which the official serves; rather it prohibits the public official from taking any action to secure employment for his family member. The purpose of R.C. 2921.42(A)(1) is to prevent the possibility that a public official may show favoritism in the exercise of his discretionary, decision-making authority in authorizing a contract for public employment.

...

... R.C. 2921.42(A)(1) will absolutely prevent employment of a public official's family member only in instances where the public official is the sole or ultimate hiring authority, and where there is no other person or entity who may exercise such hiring authority. A family member of an official will not be prevented from being employed by the same political subdivision in instances where the appointment may be made by some other person or entity who may exercise such hiring authority, where it is possible for a superior to authorize the employment, or where the official is not the appointing authority for that particular position. The official is, however, required under all circumstances to abstain from participating in the employment process.

Adv. Op. No. 90-010 (emphasis added) (citations omitted). See also State ex rel. Halleck v. Delaware County Commissioners, unreported, Case No. 96CA-E-04-021 (Delaware App., Dec. 13, 1996) (holding that R.C. 124.11(B)(1) prevents local governments from implementing a broadly inclusive "no relatives" employment policy). Therefore, R.C. 2921.42(A)(1) prohibits you from voting, discussing, deliberating, or otherwise participating in any part of the township's decision-making process with respect to your husband's individual contract of employment and from exercising the power and influence of your public employment to affect the terms and conditions of your husband's individual contract of employment even if you do not participate in the original hiring decision.

In addition to R.C. 2921.42(A)(1), your question also implicates R.C. 102.03(D), which provides:

No public official or employee shall use or authorize the use of the authority or influence of 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 the public official or employee with respect to that person's duties.

The term "public official or employee" is defined for purposes of R.C. 102.03(D) to include any person who is elected or appointed to an office of a township. See R.C. 102.01(B) and (C). The Commission has previously held that a township trustee is a "public official or employee" for purposes of R.C. 102.03(D). See Adv. Op. No. 91-001.

The term "anything of value" is defined for the purposes of R.C. 102.03(D) to include money, a promise of future employment, and every other thing of value. See R.C. 102.01(G) and R.C. 1.03. An employee's continued employment, and the compensation received therefor, falls within the definition of "anything of value." See Adv. Ops. No. 90-004 and 92-012.

The Commission has held that R.C. 102.03(D) prohibits a public official or employee from using his authority or influence, formally or informally, to secure anything of value for himself or any other party, if the relationship between the employee and the other party is such

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that the employee's objectivity and independence of judgment could be impaired. See Adv. Ops. No. 88-004, 89-005, and 97-002. Specifically, the Commission has stated that R.C. 102.03(D) prohibits a public employee from using her authority or influence, formally or informally, to secure anything of value for members of the employee's family, including her spouse. See Adv. Ops. No. 89-008 (spouse and children), 90-004 (spouse), 91-004 (spouse), and 92-012 (spouse).

Therefore, R.C. 102.03(D) prohibits you from using your authority or influence, formally or informally, to secure the employment of your husband, or to otherwise act with respect to your husband's individual contract of employment. See Adv. Ops. No. 92-012 and 97-004. These matters include, but are not limited to, any of the following: changes in compensation or benefits that are determined by individual working conditions, the assignment of duties that will change the terms of the contract, evaluations, and actions involving promotions, discipline, lay-offs, and termination. Id. Furthermore, R.C. 102.03(D) prohibits you from using the authority or influence of your office, formally or informally, to influence the decisions or actions of other officials or employees in matters that would affect your husband's interest in his individual employment relationship with the township.

Prohibitions Against Acting on a Collective Bargaining Agreement that Covers a Family Member

You have also asked whether the Ohio Ethics Law and related statutes prohibit you, as a Plain Township trustee, from participating in or voting on matters involving the collective bargaining agreement that covers your husband's employment with the township. The Ethics Commission has recognized a distinction between an individual contract for public employment and a collective bargaining agreement. See Adv. Ops. No. 82-003, 89-005, and 92-012. In Advisory Opinion No. 82-003, the Commission explained that a collective bargaining agreement, which is entered into by a labor organization representing a political subdivision's employees and the political subdivision and which establishes the terms and conditions of employment for the covered employees, is also a "public contract" for purposes of R.C. 2921.42. See also Adv. Ops. No. 89-005 and 92-012.

As stated above, R.C. 2921.42(A)(1) prohibits a public official from authorizing, or employing the authority or influence of his office to secure the authorization of, any public contract in which "a member of his family" has an interest. The Commission has held, however, that an individual employee's interest in the collective bargaining agreement is not "sufficiently definite and direct" to invoke the prohibitions of R.C. 2921.42(A)(1). See Adv. Ops. No. 82-003, 89-005, 89-008, and 92-012. Accordingly, even though a public official's family member is employed by a political subdivision subject to the terms and conditions of a collective bargaining agreement, R.C. 2921.42(A)(1) does not prohibit the official from voting to ratify or reject the collective bargaining agreement. See Adv. Ops. No. 82-003, 89-005, and 92-012.

The Commission has also held, however, that an individual employee's interest in the collective bargaining agreement is "sufficiently definite and direct" when the employee is an officer, board member, or member of the negotiating team of the labor organization. See Adv.

Ops. No. 82-003, 89-005, 89-008, and 92-012. Accordingly, when a public official's family member is employed by a political subdivision subject to the terms and conditions of a collective bargaining agreement, and the employee is an officer, board member, or member of the negotiating team of the labor organization, R.C. 2921.42(A)(1) prohibits the official from voting to ratify or reject the collective bargaining agreement. See Adv. Ops. No. 82-003, 89-005, and 92-012. Further, the Commission has suggested that when a public official's family member is employed by a political subdivision subject to the terms and conditions of a collective bargaining agreement, the official should refrain from taking an active role in the negotiations in order to avoid an appearance of impropriety. See Adv. Ops. No. 89-005 and 92-012.

Therefore, even though your husband has been employed by the township Road Department subject to the terms and conditions of a collective bargaining agreement, R.C. 2921.42(A)(1) does not prohibit you from voting to ratify or reject the collective bargaining agreement that exists between Plain Township and the township Road Department unless your husband is an officer, board member, or member of the negotiating team of the labor organization.

Participating in General Resolutions to Pay the Payroll for the Department that Employs a Family Member

You have also asked whether the Ohio Ethics Law and related statutes prohibit you, as a Plain Township trustee, from participating in, or voting on, matters involving general resolutions to pay the payroll for the township Road Department. The Commission has held that R.C. 102.03(D) does not prohibit a public official from participating in or voting on a general budget appropriation which includes money to fund a family member's compensation and benefits provided that the amount of the family member's compensation and benefits has been established independently of the appropriation (most likely in the collective bargaining agreement) and cannot be altered during the consideration of the appropriation. See Adv. Ops. No. 90-004, 91-004, and 92-012. Therefore, R.C. 102.03(D) does not prohibit you from participating in or voting on a general budget appropriation which includes money to fund your husband's compensation and benefits provided that your husband's compensation and benefits has been established independently of the appropriation and cannot be altered during the consideration of the appropriation.

Signing the Payroll Checks of a Family Member

You have also asked whether the Ohio Ethics Law and related statutes prohibit you, as a Plain Township trustee, from having your authorized signature stamped on your husband's payroll checks. Ohio law provides that "[a] signature may be made manually or by means of a device" such as an authorized signature stamp. See Ohio Revised Code 1303.41(B). The Commission has stated that the counter-signing of a payroll check, once the payment of that compensation has been independently approved by the township trustees, is a ministerial function performed without decision-making authority or discretion. See Adv. Op. No. 92-010; but see Adv. Op. No. 91-001 (a public official is prohibited by R.C. 2921.42(A)(1) and R.C.

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102.03(D) from signing warrants or checks to a company which employs him); State v. Pinkney (1988), 36 Ohio St. 3d 190. Although it may be better practice for the other two trustees to sign the warrants or checks to your husband, R.C. 2921.42(A)(1) and R.C. 102.03(D) do not prohibit you from signing your husband's payroll checks in this situation. Any other expenses or compensation, beyond that specifically authorized by the collective bargaining agreement, must be reviewed and signed by someone other than you.

Participating in General Budget Appropriations to the Department that Employs a Family Member

Finally, you have asked whether the Ohio Ethics Law and related statutes prohibit you, as a Plain Township trustee, from participating in or voting on matters involving general budget appropriations, for such items as new tires, road salt, and computer programs, for the township Road Department. The Commission has held that R.C. 102.03(D) prohibits a public official from participating in, or voting on, matters where the public official's family member would receive a definite and direct, private pecuniary benefit. See Adv. Op. No. 90-004. While it is possible that the employee's workload may be eased and the functioning of his job expedited by general budget appropriations for such items as accommodations, personnel, and supplies, the Commission has held that such appropriations by and for the use of a public agency generally will not provide a definite and direct, personal pecuniary benefit to the individual employee. Id. Accordingly, the Commission has held that R.C. 102.03(D) does not prohibit a public official from participating in or voting on general budget appropriations to the department which employs a family member of the official provided that the appropriations are for the department's general accommodations, supplies, and operating expenses and do not provide a definite and particular personal benefit to the family member. See Adv. Ops. No. 90-004 and 92-012. Therefore, R.C. 102.03(D) does not prohibit you from participating in or voting on general budget appropriations for the township Road Department provided that the appropriations are for the department's general accommodations, supplies, and operating expenses and do not provide a definite and particular personal benefit to your husband.

Summary and Conclusion

As set forth above, R.C. 2921.42(A)(1) and R.C. 102.03(D) prohibit you from authorizing, or employing the authority or influence of your office to secure the authorization of, your husband's individual contract of employment, and from voting, discussing, deliberating, or otherwise participating in any matter or decision which would affect the continuation, implementation, or terms and conditions of your husband's contract of employment. R.C. 2921.42(A)(1) and R.C. 102.03(D) also prohibit you from voting, discussing, deliberating, or otherwise participating in any part of the township's decision-making process authorizing or approving your husband's individual contract of employment, and from exercising the power and influence of your public office to affect the township's decision-making process regarding your husband's individual contract of employment.

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In this matter, however, your husband's individual contract of employment with the township Road Department is subject to the terms and conditions of a collective bargaining agreement that exists between Plain Township and the township Road Department. As set forth above, R.C. 2921.42(A)(1) does not prohibit you from voting to ratify or reject the collective bargaining agreement unless your husband is an officer, board member, or member of the negotiating team of the labor organization. Further, R.C. 102.03(D) does not prohibit you from participating in or voting on a general budget appropriation which includes money to fund your husband's compensation and benefits provided that your husband's compensation and benefits have been established independently of the appropriation (most likely in the collective bargaining agreement) and cannot be altered during the consideration of the appropriation. Also, R.C. 2921.42(A)(1) and R.C. 102.03(D) do not prohibit you from signing your husband's payroll checks, again provided that your husband's compensation has been established independently of the appropriation and cannot be altered. Finally, R.C. 102.03(D) does not prohibit you from participating in or voting on general budget appropriations for the township Road Department provided that the appropriations are for the department's general accommodations, supplies, and operating expenses and do not provide a definite and particular personal benefit to your husband.

This informal advisory opinion was approved by the Ohio Ethics Commission on March 6, 1998, and is based on the facts presented. Pursuant to R.C. 102.08(B), this opinion, like any written opinion of the Commission, provides the same protections as a formal advisory opinion. You may reasonably rely upon this opinion and shall be immune from criminal prosecutions, civil suits, or actions for removal from office for a violation of Chapter 102. or R.C. 2921.42 or R.C. 2921.43 based on the facts and circumstances covered by this opinion, where the opinion states that there is no violation of Chapter 102. or R.C. 2921.42 or R.C. 2921.43. It is limited to questions arising under Chapter 102. and Sections 2921.42, 2921.421, and 2921.43 of the Revised Code, and does not purport to interpret other laws or rules. If you have any questions, or need additional information, please feel free to contact this Office again.

Very truly yours,



Blaine W. Brown
Staff Attorney