

# OHIO ETHICS COMMISSION

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March 16, 2000

Informal Opinion 2000-INF-0316-1

Mr. James V. Frazier III, Superintendent  
Fayetteville-Perry Local Schools

Dear Mr. Frazier:

In a letter to the Ethics Commission, you ask whether the Ethics Law and related statutes prohibit a public official from voting, discussing, or otherwise participating in the issuance of a public employment contract, a salary determination, or any other benefit to another official where one official is a member of ABC local school board and treasurer of XYZ library board and the other official is a member of XYZ library board and administrator of ABC local school district.

As explained more fully below, R.C. 102.03(D) prohibits a public board member from voting, discussing, deliberating, formally or informally lobbying, or taking any other official action in any matter concerning the employment contract of an employee of that board where the employee is also a member of the public board by which the board member is employed. In addition, under these circumstances, each board member must abstain from participating on matters where the other board member may receive something of value. 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.

The Ethics Law does not, however, prohibit either board member from participating in matters in which an employee of that board, who is also a member of the public board that employs the board member, may receive an incidental benefit, such as the provision of facilities and equipment, to be used in carrying out the duties of their respective public positions. Further, the Ethics Law does not prohibit either board member from participating in matters in which a group or class of employees, including the employee that holds a position of authority over the board member in another public entity, receives a uniform benefit.

that may be authorized by the board unless the administrator notifies the board in writing to the contrary on or before the first day of June, or unless the board, on or before the last day of March of the year in which the contract of employment expires, either reemploys the administrator for a succeeding term or gives written notice of its intention not to reemploy the administrator.

The local school board evaluates the administrator and bases its employment decision on the evaluation. R.C. 3319.02(D). An administrator's contract may not be terminated or suspended by the board except pursuant to section 3319.16 or 3319.17 of the Revised Code. R.C. 3319.02(C). R.C. 3319.16 provides that the contract may not be terminated except for gross inefficiency or immorality; for willful and persistent violations of reasonable regulations of the board of education; or for other good and just cause.

#### **Powers and Duties of a County Free Public Library Board Member—R.C. 3375.40**

Just as a member of a local school district board performs duties and exercises powers that affect an administrator of that local school district, a member of a county free public library board performs duties and exercises powers that affect a treasurer of that county free public library.

A county free public library is established pursuant to R.C. 3375.06, which provides for the appointment of the board of library trustees. R.C. 3375.06 further provides that the board of trustees of a county free public library shall control and manage the library, and is governed by R.C. 3375.33 to 3375.41. R.C. 3375.33 provides that a board of trustees of a county free public library, appointed pursuant to R.C. 3375.06, is a body politic and corporate, capable of suing and being sued, contracting, acquiring, holding, possessing, and disposing of property, and of exercising such other powers and privileges as are conferred upon it by law.

R.C. 3375.40 grants a county free public library board broad authority to "generally do all things it considers necessary for the establishment, maintenance, and improvement of the county library under its jurisdiction." More specifically, county free public library boards have the authority to appoint and fix the compensation of all of the employees of the county library under its jurisdiction. R.C. 3375.40(G). Further, county free public library boards have the authority to purchase, lease, improve, equip, and furnish buildings. R.C. 3375.40(C). Finally, a county free public library board makes and publishes rules for the proper operation and management of the county free public library and facilities under its jurisdiction. R.C. 3375.40(H).

#### **Using or Authorizing the Use of the Authority or Influence of Office—R.C. 102.03(D)**

Based on the statutory powers and duties of each board, as described above, R.C. 102.03(D) is applicable to the board members in the situation that you have set forth in your correspondence to the Commission. R.C. 102.03(D) provides the following:

Based on the powers and duties of a county free public library board member and a local school district board member, as outlined above, it is clear that each board member has authority over employees of the board he serves. Each board member has the authority to act in matters involving the employment contracts of employees of that board.

Based on the relationship between the two board members in the two separate political subdivisions, R.C. 102.03(D) prohibits each board member from using his or her authority or influence, formally or informally, to act with respect to the other board member's individual contract of employment. See Adv. Ops. No. 92-012 and 97-004. Each board member is also prohibited from acting on any matters related to the other board member's employment. 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 each board member from using the authority or influence of her office, formally or informally, to influence the decisions or actions of other officials or employees of their respective boards in matters that would affect the other board member's individual employment relationship with the school district or the county library.

#### **Provision of a Uniform Benefit**

In the course of the performance of his or her official duties on the board, each board member may have the opportunity to participate in matters that would provide a benefit to a group or class of individuals that includes the other board member. If this situation were to arise, R.C. 102.03(D) would not prohibit the board member from participating in matters that would provide a benefit to the other board member that is identical to, and in common with, the benefit received by an entire class of employees of the school district or county free public library. See Adv. Op. No. 92-012. For instance, R.C. 102.03(D) would not prohibit the board member from participating in matters involving an across-the-board salary increase that would provide a uniform benefit to a significant class or group of employees, including the other board member. Id. If, however, the other board member would be differentially affected by a matter pending before the board, R.C. 102.03(D) would prohibit the board member from participating in that matter. Id.

#### **Provision of Facilities, Equipment, and Supplies**

As stated above, the county free public library board member is responsible for providing facilities, equipment, and other supplies for the use of the employees of the county free public library. The next question is whether facilities, equipment, and other supplies for the county free public library would be a substantial thing of value for an employee of that library (who also holds a position of authority over the county free public library board member in a separate political subdivision) such that it would have an improper influence upon the county free public library board member with respect to the performance of his official duties.

two public board members are not "business associates" for purposes of R.C. 2921.42(A)(1), because a public agency is not engaged in a "business" enterprise. Based on the reasoning of that advisory opinion, a public board member and an employee of the public agency are not "business associates" for purposes of R.C. 2921.42(A)(1). Therefore, the prohibition of R.C. 2921.42(A)(1) does not apply to the facts that you have presented to the Commission.

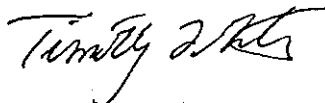
### Conclusion

As explained more fully above, R.C. 102.03(D) prohibits a public board member from voting, discussing, deliberating, formally or informally lobbying, or taking any other official action in any matter concerning the employment contract of an employee of that board where the employee is also a member of the public board by which the board member is employed. In addition, under these circumstances, each board member must abstain from participating on matters where the other board member may receive something of value. 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.

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The Ohio Ethics Commission approved this informal advisory opinion at its meeting on March 16, 2000. The opinion is based on the facts presented and 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 desire additional information, please contact this Office again.

Sincerely,



Timothy L. Gates  
Staff Attorney