

# OHIO ETHICS COMMISSION

Merom Brachman  
*Commission Chair*

David E. Freel  
*Executive Director*



8 East Long Street, 10<sup>th</sup> Floor  
Columbus, Ohio 43215  
Telephone: (614) 466-7090  
Fax: (614) 466-8368

Web site: <http://www.ethics.state.oh.us>

October 27, 2000

Informal Opinion 2000-INF-1027-1

David S. Blaugrund, Esq.  
Blaugrund, Herbert & Martin



Dear Mr. Blaugrund:

In a letter received by the Ohio Ethics Commission on August 8, 2000, you asked whether the Ethics Law and related statutes prohibit an individual from holding simultaneously the positions of superintendent of a county board of MR/DD and superintendent of an educational service center (ESC).

## Opinion Summary

As explained more fully below, based on the nature of the statutory powers and duties of a superintendent of an ESC and an MR/DD board, an individual who serves in both positions would have an inherent conflict of interest or divided loyalties such that his independent and objective judgment with regard to carrying out the decisions and responsibilities of each board could be impaired if the MR/DD board has the authority to serve any school districts in the same territory as the ESC. Therefore, R.C. 102.03(D) and (E) prohibit a superintendent of an ESC from serving as superintendent of a county MR/DD board if the board has the authority to serve any school districts in the same territory as the ESC.

R.C. 2921.42(A)(4) prohibits an individual from serving in the positions of superintendent of a county board of MR/DD and superintendent of an ESC if the county board of MR/DD and the ESC governing board have a contractual relationship, unless each of the four requirements of R.C. 2921.42(C) can be met. If each of the four requirements of R.C. 2921.42(C) can be met, R.C. 2921.42(A)(1) prohibits a superintendent of a county board of MR/DD and ESC from authorizing, or using his position to secure authorization of, a contract between the ESC and the MR/DD board.

As described more fully below, the Commission is recommending prospective application of the conclusions in this opinion.

### **Compatibility of Public Positions**

The occupation of more than one public position by the same person raises the question of whether such positions are "compatible"—that is, whether a person may simultaneously hold two public positions. Seven criteria which are independent of the statutes under the Ethics Commission's jurisdiction are used to determine "compatibility." See 1979 Ohio Op. Att'y Gen. No. 79-111. One of the seven criteria is whether there is a conflict of interest between the two public positions in question that would preclude service in both public positions. *Id.* The Ethics Commission has explained that an interpretation of the restrictions imposed by the Ethics Law, Chapter 102., and related statutes, Sections 2921.42 and 2921.43 of the Revised Code, is not the same as a determination of compatibility. See Ohio Ethics Commission Advisory Opinion No. 91-002. See also 1990 Ohio Op. Att'y Gen. No. 90-037. The Attorney General's Office can furnish further information on the "compatibility" of public positions.

Even in situations where a conflict of interest does not preclude service in both public roles, and the public positions in which a public official or employee wishes to serve are compatible, several of the statutes over which the Ethics Commission has jurisdiction must be examined to determine whether they may further restrict the official's or employee's actions in both public positions. See Adv. Op. No. 91-006.

Before addressing the application of the Ethics Law and related statutes to the question that you have posed, it is first necessary to examine the powers and duties of a superintendent of a county MR/DD board and a superintendent of an ESC.

### **Powers and Duties of a Superintendent of a County MR/DD Board**

R.C. 5126.023 provides that each county board of MR/DD shall either employ a superintendent or obtain the services of the superintendent of another county board of mental retardation and developmental disabilities. Each county board that employs its own superintendent employs the superintendent under a contract. See R.C. 5126.023. R.C. 5126.04 sets forth the following duties of the superintendent of a county board of MR/DD:

- (A) Administer the work of the board, subject to the board's rules;
- (B) Recommend to the board the changes necessary to increase the effectiveness of the programs and services offered pursuant to Chapters 3323. and 5126. of the Revised Code;
- (C) Employ persons for all positions authorized by the board, approve contracts of employment for management employees that are for a term of one year or less, and approve personnel actions that involve employees in the classified civil service as may be necessary for the work of the board;
- (D) Approve compensation for employees within the limits set by the salary schedule and budget set by the board and in accordance with section

5126.26 of the Revised Code, and ensure that all employees and consultants are properly reimbursed for actual and necessary expenses incurred in the performance of official duties;

- (E) Provide consultation to public agencies as defined in division (C) of section 102.01 of the Revised Code, including other county boards of mental retardation and developmental disabilities, and to individuals, agencies, or organizations providing services supported by the board.

R.C. 5126.04 further provides that the superintendent may authorize the payment of board obligations by the county auditor.

Based on the information that you provided to the Ethics Commissions, superintendents of county MR/DD boards typically sign contracts on behalf of the MR/DD boards. In particular, the superintendent of a county MR/DD board and the superintendent of an ESC may sign contracts for the reimbursement, by the MR/DD board to the ESC governing board, of costs incurred by the ESC board in supporting and providing programs designed for school-aged multiple handicapped and preschool handicapped students.

#### **Powers and Duties of a Superintendent of an ESC Governing Board**

A superintendent of an ESC is appointed by the governing board of the ESC. R.C. 3319.01. The superintendent is employed for a term not longer than five years. Id.

The superintendent of an ESC is the executive officer for the governing board. Id. The superintendent directs and assigns teachers and other employees of the district or service center, assigns pupils to the proper schools and grades, and performs such other duties as the governing board determines. Id. The board of education of a local school district and the governing board of the educational service center of which the local district is a part may enter into an agreement requiring the local superintendent, instead of the superintendent of the educational service center, to exercise the responsibilities with regard to the assignment of pupils and teachers for the local school district. Id.

#### **Intersection of Powers and Functions of ESC and MR/DD Boards**

Under R.C. 3323.07, a board of education is required to establish and maintain programs for the education of children with handicaps in accordance with the standards set by the State Board of Education. A school district "may arrange, by a cooperative agreement or contract with one or more school districts or with a cooperative education or joint vocational school district or an educational service center, to provide for the identification, location, and evaluation of handicapped children, and classes or other suitable education programs for such children that meet the standards established by the state board of education under [R.C. Chapter 3323.]." R.C. 3323.08. Under R.C. 3323.09, as authorized by the State Board of Education, the Director of Mental Retardation and Developmental Disabilities "shall establish special education programs for all handicapped children who in accordance with section 3323.04 of the Revised Code have

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been placed in special education programs operated by the county board and for preschool children who are developmentally delayed or at risk of being developmentally delayed." Therefore, pursuant to R.C. 3323.07 and R.C. 3323.09, special education for children with handicaps may be provided by both governing boards of educational service centers and county MR/DD boards.

Under R.C. 3323.04, the board of education of each school district is required to place each child with a handicap who is of compulsory school age, and who resides within the district, in an appropriate education program, in accordance with R.C. 3319.01, which may include instruction in regular classes, a special education program, or any combination thereof. The board of education may enter into a contract with an ESC governing board to provide educational services for children with handicaps, in which case the superintendent of the ESC may be responsible for the placement of children with handicaps in appropriate education programs. See R.C. 3319.01 and 3323.08. Prior to the placement of a child in a special education program operated under R.C. 3323.09, the board of education or ESC must consult with the county board of MR/DD. A special education program may be operated by the board of education, an ESC, or by the county board of MR/DD. See R.C. 3323.021 (a school district, educational service center, or participating county MR/DD board may enter into an agreement or contract with another school district, educational service center, or participating county MR/DD board to provide educational services to a child with a handicap during a school year). School district special education classes and support units that are approved by the State Board of Education for funding under R.C. 3317.05 also receive the same funding as units operated by school districts. R.C. 3317.024. Approved classroom units are determined primarily on the basis of the average daily membership of children with handicaps in classes that are eligible for approval by the State Board of Education under R.C. 3317.05. Therefore, a major factor in calculating the amount of state funding of special education programs for school districts and county boards of MR/DD is the number of pupils in classes operated by the board of education or ESC governing board and the board of MR/DD.

Based on the relationship between the county boards of MR/DD and ESC boards, you ask whether an individual who simultaneously holds the positions of superintendent of a county board of MR/DD and superintendent of an ESC is subject to conflicts of interest that would prohibit the individual from holding both positions.

The situation you have described implicates public contract provisions of the Ethics Law and related statutes, as well as conflict of interest provisions contained within the Ethics Law. The Ethics Commission has the authority to interpret R.C. Chapter 102., and R.C. 2921.42, 2921.421, and 2921.43. You should also be aware that your question may implicate other provisions of the law outside of the Ethics Commission's jurisdiction.

**Securing Something of Value—R.C. 102.03(D)**

Your question initially implicates R.C. 102.03(D) and (E), which provide the following:

- (D) 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.
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- (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 the public official or employee with respect to that person's duties.

A "public official or employee" is defined, for purposes of R.C. 102.03, to include any person who is elected or appointed to an office or is an employee of any public agency. R.C. 102.01(B). A superintendent of a county MR/DD board falls within the definition of "public official or employee" for purposes of R.C. 102.03 and is subject to the prohibition imposed by Division (D). R.C. 102.01(B) and (C). See generally Adv. Ops. No. 88-001 and 89-013. A superintendent of an ESC also falls within the definition of "public official or employee" for purposes of R.C. 102.03 and is likewise subject to the prohibition imposed by Division (D). See Adv. Op. No. 98-003.

R.C. 102.03(D) and (E) prohibit a public official from soliciting, accepting, or using the authority or influence of his office or employment to secure 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 Ethics Commission has concluded that a pecuniary or fiduciary interest in a private enterprise is within the definition of "anything of value," as used in R.C. 102.03. See Adv. Ops. No. 86-007 and 87-006. R.C. 102.03(D) and (E) draw no distinction between private and public outside employers for purposes of the prohibitions of R.C. 102.03(D). See Adv. Ops. No. 77-006, 82-002, 89-006, and 89-010. Therefore, holding a position as the chief operating or fiscal officer of a public agency, or serving as a board member of that agency, can clearly establish a fiduciary interest in the contracts or dealings of that public agency, and would also be within the definition of "anything of value," as used in R.C. 102.03.

The Ethics Commission has consistently held that public officials and employees are not prohibited by the Ohio Ethics Law from holding outside positions so long as no actual conflict of interest exists between the official's or employee's respective positions. See Adv. Ops. No. 85-006 and 86-008. If, however, a public official's or employee's outside public or private position could impair his independence of judgment with regard to his official decisions and responsibilities, and thus, is of such a character as to manifest a substantial and improper influence upon him, the public official or employee is prohibited from holding the outside private or public employment. See Adv. Ops. No. 84-009 and 85-006. See also Adv. Ops. No. 77-006, 86-007, and 86-008.

In the situation that you have presented to the Commission, where a superintendent of an ESC also serves as superintendent of a county MR/DD board, it is clear that the overlapping powers and duties of each position would impair the independence of judgment, with regard to official

decisions and responsibilities, of any individual who served in both positions. For instance, special education for children with handicaps may be provided by both ESC's and county boards of MR/DD.

Under R.C. 3323.04, the board of education of each school district is required to place each child with a handicap who is of compulsory school age, and resides within the district, in an appropriate education program which may include instruction in regular classes, a special education program, or any combination thereof. A board of education may enter into a contract with an ESC governing board to place children with handicaps in appropriate education programs. Prior to the placement of a child in a special education program operated under R.C. 3323.09, the board of education or ESC governing board must consult with the county board of MR/DD. A special education program may be operated by the board of education, the ESC governing board, or by the county board of MR/DD. School district special education classes and support units that are approved by the State Board of Education for funding under R.C. 3317.05 also receive the same funding as units operated by school districts. R.C. 3317.024. Approved classroom units are determined primarily on the basis of the average daily membership of children with handicaps in classes that are eligible for approval by the State Board of Education under R.C. 3317.05. Therefore, a major factor in calculating the amount of state funding of special education programs for school districts and county boards of MR/DD is the number of pupils in classes operated by the board of education or ESC and the board of MR/DD.

It is apparent from the statutes outlining the duties of a superintendent of a county board of MR/DD and a superintendent of an ESC that the superintendents of the respective public entities often may stand in adversarial positions. The superintendent of an ESC may direct and assign teachers and other employees of the district or service center, assign pupils to the proper schools and grades, and perform such other duties as the board determines. R.C. 3319.01. The superintendent of a county board of MR/DD administers the work of the board, and, as the documents that you have provided to the Commission indicate, signs contracts on behalf of the county board of MR/DD. One such contract that may be entered into by the superintendent of the county board of MR/DD is a contract between the MR/DD board and the ESC board regarding the placement of children with handicaps in appropriate education programs. The assignment of pupils in classrooms affects the funding received by each board. Therefore, a superintendent of an ESC and who also serves as a superintendent of a county board of MR/DD would have an inherent conflict of interest or divided loyalties such that his independent and objective judgment with regard to carrying out the decisions and responsibilities of each board could be impaired.

As explained above, the board of education of a local school district and the governing board of the educational service center of which the local district is a part may enter into an agreement requiring the local superintendent, instead of the superintendent of the educational service center, to exercise the responsibilities with regard to the assignment of pupils and teachers for the local school district. R.C. 3319.01. As also explained above, however, the superintendent of the ESC is the executive officer of the ESC governing board. As executive officer, the ESC superintendent would hold a position of trust in his public employment with the board. Based on his position of trust, the superintendent of the ESC would have an inherent conflict of interest in

matters affecting the financial interests of the ESC by which he is employed and the interests of the county MR/DD board that he serves as superintendent.

In light of these and other potential conflicts not itemized or examined, Divisions (D) and (E) of Section 102.03 prohibit a superintendent of an ESC from serving as superintendent of a county MR/DD board that has the authority to serve any school districts in the same territory as the ESC.

**Authorizing an ESC or MR/DD Contract—R.C. 2921.42(A)(1)**

The situation that you have described also implicates 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, or employee, or agent of . . . any political subdivision" of the state. A superintendent of an ESC is a "public official" as that term is defined in R.C. 2921.01(A), such that the superintendent is subject to the prohibitions of R.C. 2921.42. See Adv. Op. No. 98-003. Likewise, a superintendent of a county board of MR/DD is a "public official" as that term is defined in R.C. 2921.01(A), such that the superintendent is subject to the prohibitions of R.C. 2921.42. See R.C. 5126.023; Adv. Ops. No. 88-001 and 89-013.

The term "public contract" is defined, for purposes of R.C. 2921.42, in Division (G)(1)(a) of that section, to include the purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of the state, any of its political subdivisions, or any agency or instrumentality of either. Thus, any contract for the purchase or acquisition of property or services by or for the use of the county board of MR/DD, or the ESC governing board, would be a "public contract."

R.C. 2921.42(A)(1) prohibits a public official from authorizing, or using his position to secure authorization of, a public contract in which he has an interest. A superintendent of a county MR/DD board or an ESC may have a pecuniary interest in a contract of his respective employer if the contract affects the superintendent's personal financial interests. A superintendent of a county MR/DD board or an ESC would also have a fiduciary interest in a contract of his respective employer where he is entrusted with the power and authority to act on behalf of his public employer. See Adv. Op. No. 99-004.

In Advisory Opinion No. 99-004, the Ethics Commission stated that a member of a school district board of education is a person to whom power is entrusted for the benefit of the citizens in the school district, and who has a relationship with the district that is based on trust and confidence. Accordingly, the Commission concluded that members of a school district board of education have a fiduciary relationship with the school district, and would have a

fiduciary interest in the contracts of the district. *Id.* In so concluding, the Commission cited the dictionary definition of “fiduciary” as “a person to whom property or power is entrusted for the benefit of another,” and “of, based on, or in the nature of trust and confidence, as in public affairs.” Random House Webster’s Unabridged Dictionary 714 (1997).

As stated above, a superintendent of an ESC is the executive officer for the board. The superintendent directs and assigns teachers and other employees of the district or service center, assigns pupils to the proper schools and grades, and performs such other duties as the ESC board determines. See R.C. 3319.01. Based on the nature of these statutory duties and responsibilities, a superintendent of an ESC is a person to whom property or power is entrusted for the benefit of another, and to whom trust and confidence has been bestowed in the performance of his public duties. Therefore, a superintendent of an ESC would have a fiduciary interest in the contracts of the board.

As also stated above, a superintendent of a county board of MR/DD administers the work of the board and recommends to the board the changes necessary to increase the effectiveness of the programs and services offered pursuant to Chapters 3323. and 5126. of the Revised Code. See R.C. 5126.04(A) and (B). A superintendent of a county board of MR/DD may also sign contracts of the board. Therefore, based on the nature of the duties of the superintendent’s public employment with the MR/DD board, the superintendent would have a fiduciary interest in the contracts of the board. Because a superintendent of a county MR/DD board and a superintendent of an ESC would have a fiduciary interest in the contract of the MR/DD board and the ESC board by virtue of his position with each board, it is not necessary to examine whether the superintendent of the respective boards would have a pecuniary interest in any contract of the boards.

Therefore, R.C. 2921.42(A)(1) prohibits a superintendent of a county MR/DD board from authorizing, or using his position to secure authorization of, a contract between his county MR/DD board and the ESC governing board that he serves as superintendent. R.C. 2921.42(A)(1) also prohibits a superintendent of an ESC from authorizing, or using his position to secure authorization of, a contract between his ESC governing board and the county MR/DD board that he serves as superintendent.

**Having an Interest in a Public Contract—R.C. 2921.42(A)(4)**

The situation that you have described also implicates R.C. 2921.42(A)(4), which provides that no public official shall knowingly:

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.

As explained above, a superintendent of an ESC and a superintendent of a county MR/DD board are “public officials” subject to the prohibitions of R.C. 2921.42(A)(1). As also explained above, the term “public contract” includes any purchase or acquisition of property or services “by or for the use of” any political subdivision.

The Ethics Commission has stated that R.C. 2921.42(A)(4) prohibits a member of a public body from having a pecuniary or fiduciary interest in the profits or benefits of a public contract entered into by a political subdivision or governmental agency or instrumentality with which he is "connected." As explained above, a superintendent of a county MR/DD board and a superintendent of an ESC would have fiduciary interests in the contracts of their respective boards. Further, a superintendent of a county board of MR/DD is connected with that board for purposes of R.C. 2921.42(A)(4), while a superintendent of an ESC is connected with the ESC for purposes of R.C. 2921.42(A)(4). Therefore, R.C. 2921.42(A)(4) would generally prohibit a superintendent of an ESC from serving as a superintendent of a county MR/DD board that enters into a contract with the ESC board unless the superintendent demonstrates compliance with each of the four requirements of the applicable exception to the prohibition of R.C. 2921.42(A)(4).

**Exception to the Prohibition of R.C. 2921.42(A)(4)—R.C. 2921.42(C)**

R.C. 2921.42(C) provides the following exception to the prohibition of R.C. 2921.42(A)(4):

- (C) This section does not apply to a public contract in which a public official, 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. (Emphasis added.)

Each of the provisions in Division (C) is a question of fact which, when applied to the circumstances of the individual case, will determine whether a particular transaction fits within the exception. Adv. Ops. No. 80-003 and 88-008. The criteria of Division (C) are strictly construed against the public official, and the official must show compliance with all four requirements in the exception. Adv. Ops. No. 83-004, 84-011, and 88-008. Divisions (C)(2) and

(C)(4) are of particular note. Division (C)(2) requires that the supplies or services be unobtainable elsewhere at the same or lower cost, or furnished as part of a continuing course of dealing. Division (C)(4) requires that the transaction be conducted at arm's length, that the public employer (the ESC board and the MR/DD board) has full knowledge of the superintendent's interest, and that the superintendent take no part in the deliberations and decision of his public employer with respect to the contracts.

Based on the information that you have provided, it appears that a superintendent of an MR/DD board and a superintendent of an ESC would not be able to meet each of the four requirements to the exception provided by R.C. 2921.42(C). For instance, in order to meet R.C. 2921.42(C)(4), the superintendent cannot discuss, deliberate, or use his position, in any way, with respect to any contract in which he has an interest, and that is entered into by, or for the use of, the MR/DD board and ESC board by which he is employed. See also R.C. 2921.42(A)(1). Where the MR/DD superintendent is required to sign board contracts, he would not be able to meet the requirement in (C)(4). Further, even where the superintendent could meet the requirement of R.C. 2921.42(C)(4), he would also be required to meet each of the three other requirements of R.C. 2921.42(C), including the requirement that the services provided pursuant to the contract between the ESC and MR/DD board are "unobtainable elsewhere for the same or lower cost." In addition, where the superintendent would be able to meet all four requirements to the exception to the prohibition of R.C. 2921.42(A)(4), he would nonetheless be prohibited, as discussed above, from also serving as superintendent of an ESC that has the authority to serve any school districts in the same territory as the county MR/DD board.

#### **Other Provisions of the Law**

The Ethics Commission has jurisdiction to interpret the provisions of R.C. Chapter 102., and R.C. 2921.42, 2921.421, and 2921.43. Your question may implicate provisions of the law outside of the Ethics Commission's jurisdiction. For instance, it appears that your question may implicate R.C. 5126.021, which provides the following:

No employee of an agency contracting with a county board of mental retardation and developmental disabilities or member of the immediate family of such an employee shall serve as a board member or an employee of the county board except that a county board may, pursuant to a resolution adopted by the board, employ a member of the immediate family of an employee of an agency contracting with the board.

The Ethics Commission does not have the authority to interpret R.C. 5126.021, or other provisions of the law outside of the Ethics Law and related statutes. If you need additional information regarding the application of other provisions of the law to your question, you should contact the county's legal advisor. Further, provisions of the law such as R.C. 5126.021 may be applicable in a determination of compatibility of the two public positions in question, as discussed above.

### **Conclusion**

As explained above, based on the nature of the statutory powers and duties of a superintendent of an ESC and an MR/DD board, an individual who serves in both positions would have an inherent conflict of interest or divided loyalties such that his independent and objective judgment with regard to carrying out the decisions and responsibilities of each board could be impaired if the MR/DD board has the authority to serve school districts in the same territory as the ESC. Therefore, R.C. 102.03(D) and (E) prohibit a superintendent of an ESC from serving as superintendent of a county MR/DD board if the board has the authority to serve any school districts in the same territory as the ESC.

R.C. 2921.42(A)(4) prohibits an individual from serving in the positions of superintendent of a county board of MR/DD and superintendent of an ESC if the county board of MR/DD and the ESC governing board have a contractual relationship, unless each of the four requirements of R.C. 2921.42(C) can be met. If each of the four requirements of R.C. 2921.42(C) can be met, R.C. 2921.42(A)(1) prohibits a superintendent of a county board of MR/DD and ESC from authorizing, or using his position to secure authorization of, a contract between the ESC and the MR/DD board.

### **Prospective Application of Opinion**

In issuing an Advisory Opinion, the Commission generally addresses prospective or hypothetical matters. The purpose of an Advisory Opinion is to provide guidance to a public official or employee prior to his taking any action that is prohibited by the Ethics Law and related statutes. The Commission generally does not, in an Advisory Opinion, address past practices. The Commission has, however, addressed a past practice where the practice has existed for many years, there is a reasonable question of whether existing law, at the time in which the practice is examined, prohibits the practice, and the Ethics Commission has not previously addressed the practice in an Advisory Opinion. See, e.g., Adv. Op. No. 85-015. In issuing an Advisory Opinion in these situations, the Commission has recommended, for purposes of criminal prosecution, application of the opinion to conduct that arises after the opinion was issued. Id.

In the present advisory matter, the Ethics Law and related statutes may not prohibit, in every conceivable instance, an individual from serving as both superintendent of a county MR/DD board and superintendent of an ESC.<sup>1</sup> Further, the practice of dual service may have been followed for several years, and has not been presented to the Ethics Commission to be addressed in an Advisory Opinion. Therefore, for purposes of criminal prosecution, the

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<sup>1</sup> As discussed above, the application of the Ethics Law and related statutes to the present question depends on whether the county MR/DD board serves any of the same school districts as the ESC, and whether there is a contractual relationship between the county MR/DD board and the ESC. While R.C. 5126.021 may also, depending on the facts of the particular situation, prohibit a superintendent of a county MR/DD board from also serving as superintendent of an ESC, the Ethics Commission does not have the authority to issue an opinion interpreting R.C. 5126.021.

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Commission recommends prospective application of this opinion to conduct arising after this opinion is issued.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on October 27, 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,

A handwritten signature in black ink that reads "Timothy L. Gates". The signature is written in a cursive style with a large initial "T" and a long horizontal stroke at the end.

Timothy L. Gates  
Staff Attorney