

OHIO ETHICS COMMISSION

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March 1, 2002

Informal Opinion 2002-INF-0301-1

Scott Evans
Cambridge City Schools

Dear Mr. Evans:

In a letter received by the Ethics Commission on November 26, 2001, you ask two questions involving a newly elected member of the Cambridge City Schools Board of Education (Board) who sued the Board prior to his taking office.

You state that on October 23, 2001, the Board terminated the administrative contract of a school principal who had been suspended since May. You also state that the former school principal was elected to the Board in the November 2001 election. You further state that on November 13, 2001, the former school principal sued the Board as an entity, and Board members and certain school district employees as individuals, for reinstatement, back pay, and other monetary damages.

This Office issued an advisory opinion on January 28, 2002 that was limited to answering your first question of whether the Ethics Law and related statutes prohibited the Board member from either maintaining a lawsuit against the Board or participating, as a Board member, in matters pertaining to his lawsuit. However, you also ask whether the Board member would have an unlawful interest in a public contract for purposes of R.C. 2921.42(A)(4) if he were to prevail in his lawsuit and be reinstated to his position of employment as a school principal. This advisory opinion will address that question.

Brief Answer

As explained below, the Board member could not simultaneously serve both as a school board member and an employee of the same school district. Therefore, if the Board member were to prevail in his lawsuit and be reinstated to his position of employment as a school principal, he would have to relinquish his Board position.

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

R.C. 2921.42(A)(4) states that no public official shall:

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 Section 2921.42 in Section 2921.01(A) to include any elected or appointed officer of a political subdivision. A member of a board of education is a “public official” for purposes of R.C. 2921.42 and subject to its prohibitions. Ohio Ethics Commission Advisory Opinion No. 90-003.

The term “public contract” is defined in R.C. 2921.42(G)(1)(a) for purposes of that section to include the employment of an individual by a political subdivision or any of its agencies or instrumentalities. The Ethics Commission has consistently explained that an “interest” that is prohibited under R.C. 2921.42 must be definite and direct, and may be either pecuniary or fiduciary in nature. Adv. Op. No. 81-008.

R.C. 2921.42(A)(4) prohibits a public official from having an interest in a public contract entered into by or for the use of the political subdivision that he serves. Adv. Op. No. 78-002. Accordingly, the Ethics Commission has determined that R.C. 2921.42(A)(4) prohibits an elected officer of a political subdivision from having a pecuniary interest in an employment contract with his own political subdivision. Adv. Op. No. 91-001 and 91-002.

In the instant situation, if the Board member were to prevail in his lawsuit and be reinstated to his position of employment as a school principal, then he would have a pecuniary interest in an employment contract with the school district for purposes of R.C. 2921.42(A)(4). The Board member could not simultaneously serve both as a school Board member and an employee of the same school district, and would, therefore, have to relinquish his Board position.

Division (C) of Section 2921.42 sets forth an exception to the prohibition of Division (A)(4). As explained below, however, the exception provided by R.C. 2921.42(C) cannot apply in the instant situation.

Other Pertinent Prohibitions—R.C. 3313.33

Your attention is directed to R.C. 3313.33, which reads in pertinent part “No member of the board [of education] shall have, directly or indirectly, any pecuniary interest in any contract of the board or be employed in any manner for compensation by the board of which he is a member.” (Emphasis added.)

The Board's legal counsel is the appropriate authority to interpret the statutory language of R.C. 3313.33 to determine whether the Board member can simultaneously serve both as a school Board member and an employee of the same school district. See R.C. 102.08 (explaining the Ethics Commission's advisory authority). As a courtesy, however, a copy of Attorney General Advisory Opinion No. 99-023, which addresses R.C. 3313.33, is enclosed.

The Ethics Commission in Advisory Opinion No. 93-008, stated that "the exception which Division (C) [of R.C. 2921.42] provides to the prohibition of Division (A)(4) [of R.C. 2921.42] does not apply to R.C. 3313.33." Therefore, unless the Board's legal counsel determines that R.C. 3313.33 does not prohibit the Board member from simultaneously serving both as a school Board member and an employee of the same school district if he were to prevail in his lawsuit, the exception provided by R.C. 2921.42(C) is inapplicable and need not be addressed.

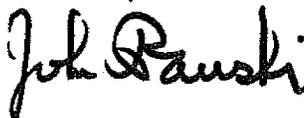
Conclusion

As explained above, the Board member could not simultaneously serve both as a school Board member and an employee of the same school district. Therefore, if the Board member were to prevail in his lawsuit and be reinstated to his position of employment as a school principal, he would have to relinquish his Board position.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on March 1, 2002. The Commission commends the district for requesting guidance before taking any actions that could be prohibited by law.

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 questions or desire additional information, please contact this Office again.

Sincerely,



John Rauski
Staff Attorney

Enclosure: Attorney General Opinion No. 99-023