

OHIO ETHICS COMMISSION

Merom Brachman
Commission Chair

David E. Freel
Executive Director



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

Website: <http://www.ethics.state.oh.us>

August 2, 2002

Informal Opinion 2002-INF-0802-2

Gary L. Sheets, Board Counsel
Butler County Board of Commissioners
Butler County Government Services Center



Dear Mr. Sheets:

In a letter received by the Ethics Commission on June 10, 2002, you ask whether the Ethics Law and related statutes prohibit a member of the Board of Commissioners of Butler County from seeking and accepting employment as the Executive Director of the Butler County Children Services Board.

Brief Answer

As explained below, given the facts that you have set forth, the county commissioner is prohibited from seeking employment as the children services board executive director.

Facts

You have explained that the children services board is an independent body whose members are selected by the board of county commissioners. The position of executive director currently exists. The current executive director is on medical leave pending retirement which is to become effective in the immediate future.

You have explained that the children services board is an eleven-member board, and that there are currently three vacancies on the board. There was another vacancy on the board that has been filled in the interval since you submitted your request to the Commission. You have explained that the county commissioner has participated in the appointment of all of the sitting members of the board, including the appointment that was made since you submitted your request to the Commission.

Board of County Commissioner Involvement in a County Children Services Board

The powers and duties of the board of county commissioners with respect to the operation of a county children services board must be examined in order to determine the extent of the prohibitions imposed upon the county commissioner in the instant situation. As described fully below, a board of county commissioners has the power to make many critical decisions concerning the budgetary and administrative operations of a children services board.

The board of county commissioners appoints the five members of a county children services board who hold office for a four-year term. R.C. 5153.03. The board of county commissioners also has the authority to remove members of a county children services board for good cause. *Id.* A county children services board is funded by taxes levied, and appropriations made, by the board of county commissioners. R.C. 5153.35. The board of county commissioners has the discretion to determine the degree of funding that it deems adequate to enable the children services board to perform its duties. 1990 Ohio Op. Att'y Gen. No. 90-069 at 2-290 ("what is necessary for the support of children services . . . is a matter of fact, and its determination involves the exercise of judgment [by the board of county commissioners]").

A children services board is required to "designate an executive officer known as the 'executive director,' who shall not be in the classified civil service." R.C. 5153.10. The executive director is responsible for administering the work of the children services board in accordance with the rules of the board. R.C. 5153.11. A board of county commissioners may supplement its appropriation to the children services board by providing annually, to the executive director, an amount not to exceed one-half the executive director's official salary to provide for necessary expenses incurred by the executive director or his staff in performing their duties. R.C. 5153.35. The executive director is statutorily authorized to order the county auditor to draw a warrant on the county treasurer, from the general fund of the county, payable to the executive director or such other person as the order designates, for the amount as the order requires, not exceeding the amount provided for by the board of county commissioners. *Id.*

The executive director is required to make an annual report to the public children services agency at the end of each calendar year and shall file copies of the report with the board of county commissioners, and other public agencies. R.C. 5153.14. The executive director is also required to submit inspection reports required under R.C. 5153.16, and such other reports as are required by law, by the rules of the director of job and family services, or by the board of county commissioners, to specified governmental bodies. R.C. 5153.14.

From the above examples, it is apparent that a board of county commissioners is extensively involved in the operation of a county children services board. Because of this extensive involvement, despite the fact that it operates as an independent board, a county children services board clearly has a direct nexus or tie to, and is interested in matters pending before, the board of county commissioners.

Soliciting or Accepting Anything of Value—R.C. 102.03(D) and (E)

R.C. 102.03(D) and (E) read as follows:

- (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.

- (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 an elected officer of a political subdivision, including a county commissioner. R.C. 102.01(B) and (C); Ohio Ethics Commission Advisory Opinion No. 88-003.

The term "anything of value" is defined for purposes of R.C. 102.03 in R.C. 1.03 to include the promise of future employment, money, and every other thing of value, including employment with a public agency and the compensation derived therefrom. R.C. 102.01(G); Adv. Op. No. 88-002.

R.C. 102.03(D) and (E) prohibit a public official or employee from accepting, soliciting, or using the authority or influence of his position to secure anything of value from any party, private or public, that is regulated by, interested in matters before, or doing or seeking to do business with, the agency he serves, or where the receipt of such a thing of value could otherwise impair his objectivity and independence of judgment with regard to his official decisions and responsibilities. Adv. Ops. No. 86-011 and 89-006. While R.C. 102.03(D) prohibits a public official from using his authority or influence to secure an improper thing of value, R.C. 102.03(E) prohibits merely soliciting an improper thing of value. Adv. Op. No. 86-011.

The Ethics Law and related statutes do not generally prohibit a public official or employee from either seeking or holding outside employment, including employment with another public agency, so long as no conflict of interest exists between the public official's or employee's public position and private financial interests. Adv. Op. No. 88-002. However, R.C. 102.03(D) and (E) prohibit a public official or employee from accepting, soliciting, or using the authority or influence of his office or employment to secure, anything of value where the thing of value could impair his objectivity and independence of judgment with respect to his official actions and decisions for the agency with which he serves or is employed. Adv. Ops. No. 80-004, 87-009, and 90-012. In some circumstances, a public official's or employee's private financial interests give rise to such an insurmountable conflict of interest and divided loyalties that R.C. 102.03(D) and (E) prohibit him from holding outside employment with a public agency. See Adv. Op. No. 88-002. See also Adv. Ops. No. 81-007, 83-007, and 92-008 (describing situations involving conflicts with outside employment in the private sector).

In Advisory Opinion No. 87-008, the Commission considered whether the Ethics Law prohibits an elected official from seeking employment with the public agency he serves. In that opinion, the Commission stated:

Division (D) of Section 102.03 . . . prohibits a school board member from voting, deliberating, discussing, or otherwise using or attempting to use his official authority or influence to secure for himself employment with the school district. (Citations omitted.) Division (E) of Section 102.03 prohibits a board member

from merely soliciting employment with the board. He may not seek such employment from other board members, board employees, or other persons of authority or influence.

...

R.C. 102.03(D) and (E) . . . prohibit a member of a board of education from taking action, formally or informally, to solicit or secure employment with the school district. He may not solicit, vote, deliberate, participate in discussions, or otherwise use or attempt to use the authority or influence of his office to secure, a position.

In this instance, while the children services board is not the same public agency with which the county commissioner serves, it is, as set forth above, closely connected with the county. Therefore, the county commissioner is subject to the same restrictions discussed in Advisory Opinion No. 87-008. The county commissioner is prohibited from using his position, in any way, to solicit or secure employment with the children services board while he remains in the position of county commissioner. The current circumstance is fraught with ethical difficulties. If the county commissioner in this situation were to seek the position of executive director of the children services board while he served on the board of county commissioners, the members of the children services board would face impaired objectivity in the exercise of their judgment. The members of the children services board could feel compelled to hire the county commissioner for fear of some form of reprisal in the future decisions by the board of county commissioners initiated by the commissioner who was the unsuccessful job candidate in matters regarding either their tenure on, or the operation of, the children services board.

The Commission continued, in Advisory Opinion No. 87-008, to say that a former public official could seek employment with his former public agency after he stepped down from his public position. The Commission stated:

[A] former board member may seek employment where a sufficient amount of time has passed since his tenure on the board to indicate that he did not use his authority or influence while on the board to secure a position for himself.

Therefore, in order for a county commissioner to compete in an open and fair process for the position of executive director of the children services board, he would be required to resign from his position with the county prior to taking any action to solicit or secure the position. This could include, for example, formal or informal discussions about the position between the commissioner and current or prospective members of the Board.

In this instance, the commissioner has made his interest in the position known in the community and has participated in the appointment of a board member after he made his interest known. For these reasons, the county commissioner is prohibited from seeking the position even if he were to now resign from his position as commissioner. The commissioner needs to make clear to all parties concerned that he will not seek or accept the position of executive director of the children services board.

The Ethics Commission has explained that an advisory opinion that prohibits a public official from pursuing a particular action does not signify that the Commission infers any improper motive or bad faith on the part of the official. Rather, the Ethics Commission has stressed that the Ethics Law and related statutes are designed to prevent the creation of any situation that may impair the objectivity and impartiality, and therefore the effectiveness, of any public official or employee or the operation of a political subdivision. See generally Adv. Ops. No. 89-014 and 90-001.

Conclusion

As explained above, given the facts that you have set forth, the county commissioner is prohibited from seeking employment as the children services board executive director.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on August 2, 2002. The Commission commends you for requesting guidance before any actions were taken 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 feel free to contact this Office again.

Sincerely,



Jennifer A. Hardin
Chief Advisory Attorney