

# OHIO ETHICS COMMISSION

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David E. Freel, *Executive Director*

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October 8, 2004

Informal Opinion 2004-INF-1008-1

Ashland City Board of Education  
Michael L. Snyder, President

[REDACTED]

Dear Mr. Snyder and Members of the Board:

In a letter received by the Ohio Ethics Commission on May 6, 2004, the Ashland City School District (District) Board of Education (Board) requested an advisory opinion regarding a member of the Board, Charles Fulk. Mr. Fulk is the President of the Ashland County Central Labor Council (Council). The Board, including Mr. Fulk, asked whether the Ohio Ethics Law and related statutes prohibit Mr. Fulk from participating and voting, as a member of the Board, in matters affecting District employees who belong to Local 233 of the Ohio Association of Public School Employees (OAPSE) given the fact that Local 233 is a member of the Council.

### Brief Answer

As explained below, because of his fiduciary relationship to the Council and its members, including Local 233 of OAPSE, R.C. 102.03(D) and (E) prohibit Mr. Fulk from participating and voting in a decision of the Board where the Council is a party to, or directly affected by, the matter. For example, Mr. Fulk is prohibited from participating in negotiations and contracts that affect Local 233, if the Council has taken a position on, consulted on, or is affected by the negotiation and contract. Mr. Fulk is not, however, prohibited from participating in a matter that affects individual District employees who are members of Local 233, unless the Council also has a definite and direct interest in the matter or has participated, formally or informally, in the matter. If, in his position as Council President, Mr. Fulk has consulted with, or provided aid, cooperation, or assistance to, any Local employee, or any person representing a Local employee, formally or informally, on the matter, he is barred from participating, as a member of the Board, if the matter comes before the Board.

Further, R.C. 102.03(A) prohibits Mr. Fulk from representing any person, including the Council, the Local, or any member of the Local, before any public agency, including the school Board, on any matter in which he personally participated as a Board member.

**Facts**

You state that the Council is a non-profit organization. Mr. Fulk is not paid for his service as the President of the Council. The Council supports all AFL-CIO members of the Council through education and political action. The Council neither negotiates for its members nor handles individual problems such as grievances. According to Article II of the Council's Constitution, among the Objects of the Council is "to provide aid, cooperation and assistance to affiliated local unions and other affiliated bodies in their common and individual endeavors."

Local 233 of OAPSE is the collective bargaining unit for classified staff of the District. Local 233 is a member of the Council. Union members support the Council by paying dues of 25 cents per month.

You have asked whether the Ohio Ethics Law and related statutes prohibit Mr. Fulk from participating and voting, as a Board member, in: (1) negotiations and contracts with OAPSE; (2) grievance procedures concerning OAPSE employees, either as individuals or as a class; and (3) hiring, discipline, and dismissal of OAPSE employees.

**Interests of Parties With a Close Relationship—R.C. 102.03(D) and (E)**

Your question implicates the conflict of interest law set forth in R.C. 102.03(D) and (E):

- (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 member of a board of education is a "public official," and is subject to the prohibitions of R.C. 102.03. R.C. 102.01(B) and (C). Ohio Ethics Commission Advisory Opinion No. 93-001. Therefore, Mr. Fulk is subject to the prohibitions imposed by R.C. 102.03(D) and (E).

The term "anything of value" is defined, for purposes of R.C. 102.03, to include money and every other thing of value. R.C. 102.01(G); 1.03. A definite and direct, pecuniary benefit to the financial interests of an individual, business, or entity, either private or public, is considered to be a thing of value under R.C. 102.03. See Adv. Ops. No. 88-004, 88-005 and 89-008. The Ethics Commission has held that a public agency's regulatory decision that affects a party's pecuniary interests is a thing of value for purposes of R.C. 102.03. See Adv. Ops. No. 86-007 and 90-002. In the instant situation, a definite, pecuniary benefit to the Council, OAPSE Local

233, or its individual members that occurs as a result of a Board decision is a thing of value under R.C. 102.03(D) and (E).

R.C. 102.03(D) and (E) prohibit a public official or employee from participating in matters that will benefit parties with whom he has a close family, economic, business, or fiduciary relationship because the benefit to these parties is a thing of value that could have a substantial and improper influence upon the office or employee. Adv. Ops. No. 88-004, 89-008, and 97-002. The prohibitions imposed by R.C. 102.03(D) and (E) serve the public interest in effective, objective, and impartial government by preventing the creation of a situation that may impair the objectivity and independence of judgment of a public official or employee. Adv. Ops. No. 89-014 and 90-002.

In Advisory Opinion No. 90-012, the Ethics Commission held that R.C. 102.03(D) prohibited a member of the Respiratory Care Board from securing anything of value for an organization that he serves in a fiduciary capacity. In that opinion, the Commission stated the following:

R.C. 102.03(D) prohibits a [public official] who serves as an officer or board member of a professional organization from participating in any matter on which the organization has taken a position or which would directly benefit the interests of the organization.

See also Adv. Op. No. 92-004 ("R.C. 102.03(D) . . . has been interpreted by the Commission as prohibiting a public official from participating in any matter that would provide a benefit to an organization which he serves as an officer or in another fiduciary capacity."). However, the Law does not prohibit an official from participating in a matter that affects an individual member of the organization, unless there is some other tie between the official and the member or the matter.

#### **Application to Specific Facts**

As set forth above, Mr. Fulk is the President of the Council and has a fiduciary duty to act in the best interests of the Council. Therefore, R.C. 102.03(D) and (E) would prohibit Mr. Fulk from participating in any matter before the Board in which the Council has an interest. Further, because he is the President of the Council and the Council provides support to its members, he may work with Council members on matters of interest to the Council. As noted above, one of the Objects of the Council is to provide aid, cooperation, and assistance to affiliated local unions in their individual endeavors. If, in fulfillment of this Object, Mr. Fulk has worked, as Council President, on matters in which Local 233, a member of the Council, has an interest, he is prohibited from participating, as a Board member, should those matters come before the Board.

For example, if the Council has provided aid, cooperation, assistance, education, or other services to Local 233 related to negotiation of a contract with the District, Mr. Fulk is prohibited from participating in the Board's negotiation or consideration of the contract. If Mr. Fulk, as

President of the Council, has provided aid, cooperation, or assistance, through consultation, advice, or in any other way, to Local 233 members or their representatives or negotiators regarding its contract with the District, Mr. Fulk is prohibited from participating, as a Board member, in the Board's negotiation or consideration of the contract. See, generally, Adv. Op. No. 90-008.

However, R.C. 102.03(D) and (E) do not prohibit Mr. Fulk from participating in matters that affect Local 233, or its individual members, unless the Council will also be affected by the Board's consideration or action on the matters, or Mr. Fulk has personally provided aid, cooperation, assistance, advice, consultation, or guidance to the Local or any members of the Local, or any of their representatives or negotiators, on the matters. Therefore, Mr. Fulk is not prohibited from participating in grievance procedures concerning Local 233 employees, individually or as a class, or the hiring, discipline, or dismissal of Local 233 employees, except in those circumstances. Once again, if Mr. Fulk, as President of the Council, has consulted with or advised, or otherwise aided, cooperated with, or assisted, Local 233, or any of its members, regarding specific matters that come before the Board, he is prohibited from participating, as a Board member, in those matters because of his fiduciary role in those matters as President of the Council.

**Representation—R.C. 102.03(A)**

R.C. 102.03(A) is also relevant to your question. R.C. 102.03(A) prohibits any public official, during his public service, from representing a client or acting in a representative capacity for any person, on any matter in which the official personally participated as an official through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion. As noted above, a school board member is a "public official" for purposes of R.C. 102.03.

"Representation" is defined, for purposes of R.C. 102.03(A), to include any formal or informal appearance before, or any written or oral communication with, any public agency. R.C. 102.03(A)(5). A "matter" is any case, proceeding, application, determination, issue, or question, and would include a labor contract, grievance procedures, and employment-related decisions. See R.C. 102.03(A)(5) and Adv. Op. No. 99-001.

R.C. 102.03(A)(1) prohibits Mr. Fulk from representing the Council, the Local, any Local member, or any other person, before the Board or any other public agency, on any matter in which he personally participated as a Board member.

For example, if Mr. Fulk participated as a Board member, through decision, approval, or other action, in the Board's decision on a grievance matter, he would be prohibited from representing any person on that matter before the Board. As noted above, representation includes any formal or informal appearance before a public agency. However, it also includes any written or oral communication with a public agency. If, on behalf of a member of the Local,

Mr. Fulk were to telephone a fellow Board member to discuss a matter on which he had participated as a Board member or send an e-mail to a Board employee on a matter in which he had participated as a Board member, he would be engaging in prohibited representation.

**Conclusion**

As explained above, because of his fiduciary relationship to the Council and its members, including Local 233 of OAPSE, R.C. 102.03(D) and (E) prohibit Mr. Fulk from participating and voting in a decision of the Board where the Council is a party to, or directly affected by, the matter. For example, Mr. Fulk is prohibited from participating in negotiations and contracts that affect Local 233, if the Council has taken a position on, consulted on, or is affected by the negotiation and contract. Mr. Fulk is not, however, prohibited from participating in a matter that affects individual District employees who are members of Local 233, unless the Council also has a definite and direct interest in the matter or has participated, formally or informally, in the matter. If, in his position as Council President, Mr. Fulk has consulted with, or provided aid, cooperation, or assistance to, any Local employee, or any person representing a Local employee, formally or informally, on the matter, he is barred from participating, as a member of the Board, if the matter comes before the Board.

Further, R.C. 102.03(A) prohibits Mr. Fulk from representing any person, including the Council, the Local, or any member of the Local, before the school Board, or any other public agency, on any matter in which he personally participated as a Board member.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on September 24, 2004. The Commission commends the Board, and Mr. Fulk, for requesting guidance. The Commission is sending a copy of the opinion to all members of the Board, as signers of the original request.

The opinion is based on the facts presented. It 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

Enclosure: Page from the Council's Constitution

cc: Charles Fulk, Board Member  
Martha Pendleton, Board Member

Mark Rafeld, Board Member  
Peggy Yoder, Board Member