

OHIO ETHICS COMMISSION

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David E. Freel, *Executive Director*

May 7, 2007

Informal Opinion 2007-INF-0507

Susan Kaschak
Tuscarawas Valley Local Board of Education

Dear Ms. Kaschak:

On April 17, 2007, the Ohio Ethics Commission received your letter requesting an advisory opinion. In your letter, you explained that you are a member of the Tuscarawas Valley Local Board of Education (Board). The Board has determined that it no longer has need of one of its elementary school buildings. You have asked whether the Ethics Law prohibits the Board from donating the building to the township in which the building is located if the wife of one of the Board members is the fiscal officer for the township.

Brief Answer

As explained more fully below, the Ethics Law does not prohibit the Board from donating the property to the township. The law also does not prohibit the Board member whose wife is the fiscal officer from participating in the discussion and decision to donate the building to the township.

Donation of Property

There is no provision in the Ethics Law that prohibits a board of education from donating surplus real or personal property to any organization, person, or entity. Therefore, in response to your specific question, the Ethics Law does not prohibit the Board from donating the property to the township in which it is located, even though the spouse of a Board member is fiscal officer for the township. The Board should seek the advice of legal counsel to determine whether it is permitted to make a donation of the property in question, and to make sure that the donation is properly structured.

However, if any member of the Board, or any family member or business associate of a Board member, were to benefit from or have an interest in the proposed donation, the Ethics Law would prohibit the Board member from participating in the Board's decision to donate the property.

Authorization of a Public Contract—R.C. 2921.42(A)(1)

R.C. 2921.42(A)(1) states 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.

A school board member is a “public official,” and is subject to R.C. 2921.42(A)(1). R.C. 2921.01(A); Ohio Ethics Commission Advisory Opinion No. 99-004. A public official’s spouse is a “member of his family” for purposes of this restriction. Adv. Ops. No. 80-001 and 89-005.

R.C. 2921.42(A)(1) prohibits a school board member from voting, discussing, deliberating, formally or informally lobbying, or taking any other action to secure the authorization of any “public contract” in which his wife has an interest. A “public contract” is any “purchase or acquisition of” property or services “by or for the use of” a public agency, and any contract for the “design, construction, alteration, repair, or maintenance of any public property.” R.C. 2921.42(G)(1)(a).

In this case, the Board is not purchasing or acquiring any property or services. Rather, it is donating surplus property to another public agency with the same taxpayer base. Further, the Board’s donation of the surplus property is not a contract for the design, construction, alteration, repair, or maintenance of the property. Even if the Board member’s wife, as fiscal officer for the township, could be considered to have a fiduciary interest in the township’s acquisition of the property, the Board’s donation of the property is not a public contract. Therefore, R.C. 2921.42(A)(1) does not apply, and the Board member is not prohibited from participating with respect to the Board’s donation of the property.

Conflict of Interest—R.C. 102.03(D) and (E)

Two relevant divisions of the conflict of interest law, set forth in R.C. 102.03(D) and (E), state:

- (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 school board member is a "public official," and is subject to the restrictions in R.C. 102.03(D) and (E). "Anything of value" includes money, goods and chattels, and "every other thing of value." R.C. 102.01(F).

R.C. 102.03(D) and (E) prohibit a public official from soliciting, or using his position to secure, anything of value that is of such a character as to have a substantial and improper influence on the official. Anything of substantial value is of such a character as to have an improper influence on an official if the thing of value could impair his objectivity and independence of judgment.

The donation of a building from one public agency to another is a substantial thing of value. If the Board member's wife would benefit from the donation of property to the township, the benefit she would receive would have an improper influence on the Board member such that he would be prohibited from soliciting or using his position to secure the property for the township. Adv. Op. No. 98-002 (R.C. 102.03(D) and (E) prohibit a public official from participating in matters before the public agency if a member of the official's family receives a substantial thing of value as a result of the agency's action on the matter.)

The Board member's wife is an elected officer of the township. As such, she has a fiduciary connection to the township. However, as fiscal officer, she would not have any official role relative to the acceptance of the donation (compared with the township trustees who may be required to vote to accept the donation). The information you have provided does not suggest that the Board member's wife receives any kind of direct personal benefit from the donation. For these reasons, even though the donation is a substantial thing of value, it cannot be said that the Board member would be improperly influenced by his wife's connection to the township in the performance of his duties related to the disposition of the surplus property.

Therefore, unless the Board member's wife has some definite and direct personal interest in the donation of the property to the township, R.C. 102.03(D) and (E) do not prohibit the Board member from participating in the Board's consideration of the disposition of the property.

While the Ethics Law does not prohibit the donation, and neither R.C. 2921.42(A)(1) nor R.C. 102.03(D) and (E) prohibit the Board member whose wife is fiscal officer for the township from participating in the Board's consideration of this matter, he should be aware that there may be an appearance of impropriety if he participates. For this reason, the Board member may wish to consider removing himself from any portion of the Board's discussion or decision related to the disposition of the surplus property.

Conclusion

As explained above, the Ethics Law does not prohibit the Board from donating the property to the township. The law also does not prohibit the Board member whose wife is the fiscal officer from participating in the discussion and decision to donate the building to the township.

Susan J. Kaschak
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The Ohio Ethics Commission approved this informal advisory opinion at its meeting on May 4, 2007. The Commission commends the Board for requesting guidance before any actions that are prohibited by law were taken.

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,

A handwritten signature in black ink, appearing to read "Jennifer A. Hardin". The signature is written in a cursive style with a large, looping initial "J".

Jennifer A. Hardin
Chief Advisory Attorney