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

[www.ethics.ohio.gov](http://www.ethics.ohio.gov)

July 21, 2008

Informal Opinion 2008-INF-0721

Ted A. Mallo  
Vice President & General Counsel  
The University of Akron  
Akron, Ohio 44325

Dear Mr. Mallo:

On April 23, 2007, the Ohio Ethics Commission received your request for an advisory opinion. You explained that John LaGuardia, Vice President for Public Affairs & Development for the University of Akron, has been asked to serve on the board of trustees for a bank that also serves as a depository for the University. Referring to Ohio Ethics Commission Advisory Opinion No. 83-003, you have asked whether the Ethics Law and related statutes prohibit the Vice President from serving as the bank's trustee. If there is no prohibition, you have asked for guidance for the University and Vice President if he were to serve as a trustee.

### **Brief Answer**

As explained more fully below, R.C. 2921.42(A)(4) prohibits a public official from having an interest in a public contract of his public agency. As a member of a bank's board of trustees, the Vice President would have a fiduciary, and may have a financial, interest in any contract of the bank, including any University deposits. Because the Vice President would have a prohibited interest in the University's deposits, he cannot serve as a trustee of the bank.

### **Having an Interest in a Public Contract**

The University Vice President is a public official subject to 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 the public official is connected.

R.C. 2921.01(A); Ohio Ethics Commission Advisory Opinion No. 83-003.

A "public contract" is defined as 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. R.C. 2921.42(I)(1)(a). The Ethics Commission has explained that the deposit of public funds in a bank that serves as a public depository is a public contract. Adv. Ops. No. 83-003, 85-007, and 92-008.

A public official is prohibited from having an interest in a public contract entered into by or for the use of his own political subdivision. See Adv. Op. No. 87-002. The Commission has determined that an "interest" prohibited by R.C. 2921.42 must be definite and direct, but can be either financial or fiduciary in nature. Adv. Ops. No. 78-005 and 81-008. Any person who is a director, trustee, or officer of a company has a fiduciary interest and, if compensated, a financial interest in the contracts of the company. Adv. Op. No. 88-008.

In your letter, you noted Advisory Opinion No. 83-003. In that opinion, the Commission explained that the chief financial officer of a state university was prohibited from serving on the board of trustees of a bank that was a university depository. The Commission concluded that, as a result of the trustee's financial and fiduciary connection with the bank, a trustee who was also an employee of the university would have a prohibited interest in the university's deposits with the bank.<sup>1</sup> Adv. Op. No. 83-003. See also Adv. Ops. No. 85-007, 93-001, and 98-001.

The Commission's conclusion in Advisory Opinion No. 83-003 also applies to the University Vice President. As a member of a bank's board of trustees, the Vice President would have a fiduciary interest in the contracts of the bank. Moreover, if the bank compensates its trustees, the Vice President would have a financial interest in the bank's contracts.

R.C. 2921.42(A)(4) prohibits the Vice President from having either a financial or fiduciary interest in *any* contract between the bank and the University, regardless of whether the contract involves his particular University department. The Commission has explained that a public official is connected with all parts of the agency that employs him, regardless of the internal administrative organization of the agency. See Adv. Op. No. 84-008 (an employee of the Bureau of Vocational Rehabilitation within the Ohio Rehabilitation Services Commission (ORSC) may not have an interest in any contract with ORSC). Because R.C. 2921.42(A)(4) prohibit the Vice President from having an interest in University contracts, he is prohibited serving on the board of trustees of a bank that is a University depository.<sup>2</sup>

In your request, you also asked for guidance if the law did not prohibit the Vice President from serving on the board. Because the law does prohibit the Vice President's service, it is unnecessary for the Commission to answer your second question.

### **Conclusion**

As explained more fully above, R.C. 2921.42(A)(4) prohibits a public official from having an interest in a public contract of his public agency. As a member of a bank's board of

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<sup>1</sup> The Uniform Depository Act (UDA) provides that an officer or director of a public depository is not deemed to have an interest in the depository's contracts. R.C. 135.11. However, state universities are not subject to the UDA. See R.C. 135.01(K) and (L).

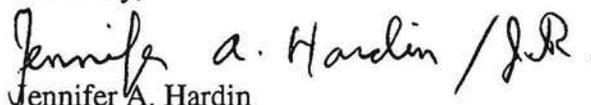
<sup>2</sup> Because the Vice President is prohibited from serving on the bank's board of trustees, it is unnecessary to discuss R.C. 2921.42(A)(1) and R.C. 102.03(D). These provisions would prohibit a public official serving on the board of trustees of a depository bank from participating in the authorization or approval of the public agency's deposits to the bank, and from any other matter in which the bank has an interest. Adv. Ops. No. 89-005, 90-012, and 92-004.

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trustees, the Vice President would have a fiduciary, and may have a financial, interest in any contract of the bank, including any University deposits. Because the Vice President would have a prohibited interest in the University's deposits, he cannot serve as a trustee of the bank.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on July 18, 2008. 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,

Handwritten signature of Jennifer A. Hardin in cursive script, followed by a forward slash and the initials 'J.A.H.'.

Jennifer A. Hardin  
Chief Advisory Attorney