

Ben Rose, *Chair*
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Merom Brachman
Betty Davis
Steven Dettelbach
Ann Marie Tracey

David E. Freel,
Executive Director



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

www.ethics.ohio.gov

September 1, 2009

Informal Opinion 2009-INF-0901

Ron Lindsey, Superintendent
Green Local School District

Dear Superintendent Lindsey:

On May 29, 2009, the Ohio Ethics Commission received your request for an advisory opinion. In your request, you explained that a high school senior in the Green Local School District (district) is running for a position on the board of education in the November election. If elected, the student will take office in January 2010, during his senior year.

The student has already contacted the Attorney General's office, which has explained that there is no bar against him running for the office of school board. You have said that the student has asked you to check to see whether any other provisions in the law prohibit him from running for school district board of education.

You have explained that you have discussed the issue of possible conflicts of interest with the student. Specifically, you are concerned about the student participating in matters that affect his teachers.

You have asked whether the law prohibits the student from running for a position on the board or, if elected, prohibits him from participating in any matters before the board.

Brief Answer

As explained below, the Ethics Law does not prohibit the student from running for a position on the district's board of education or, if elected, from serving as a board member. If elected, he will be prohibited from participating, as a board member, and as specifically described below, in any matters that affect school district officials or employees who are directly involved in his education. He is also prohibited from disclosing or using any confidential information he acquires as a board member.

Running for or Serving as School Board Member

The authority of the Ethics Commission is limited to ethics issues that arise under Ohio Revised Code Chapter 102. and Sections 2921.42 and 2921.43. These statutes generally control against personal conflicts of interest by prohibiting public officials and employees in Ohio from using their public positions to secure benefits for themselves, their family members, and their business associates. The Ethics Law and related statutes do not establish any specific limits on any person's ability to run for or serve in an elected office.

The Ethics Law does not prohibit a student in the district, who meets requirements in other portions of the Ohio Revised Code, from running for a position on the school board. However, if elected, the law will prohibit the student from participating in some matters.

Conflict of Interest—R.C. 102.30(D) and (E)

A school board member is a public official subject to 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.

"Anything of value" includes money and every other thing of value. R.C. 1.03; 102.03(G). Benefits to the school board member who is a student may fall within the definition of "anything of value."

In Ohio Attorney General Advisory Opinion No. 96-033, the Attorney General held that a thing of value must be "concrete, ascertainable and directed towards a specific person or persons." The Attorney General concluded that, under this definition, a professor's award of extra credit toward the completion of a college course was a valuable thing for purposes of R.C. 3599.01-2, which prohibit any person from giving any person a valuable thing to induce a person to vote or to agree to vote or refrain from voting. The Attorney General reasoned:

If the student is striving for a higher grade, the receipt of extra credit is valuable to him or her. Grades are an evaluation of performance, and there is certainly a subjective value associated with superior performance. Furthermore, a high grade point average can be critical to a successful career after college. This would be true if no grades were awarded in the class but a minimum level of achievement

was necessary to complete the course and receive credit for it. If the minimum level is not achieved, then the money spent to take the class would be lost and additional money would need to be spent if the student decided to repeat the class. A direct monetary consequence can be attributed to either scenario and therefore, the extra credit constitutes a thing of value. Since the extra credit would most probably be given in the form of points or a letter grade, it is concrete and ascertainable. Furthermore, the award is given to an identifiable group, the students in the professor's class.

Your question involves a high school student rather than a college student. However, extra credit, higher grades or class placement, or other benefits related to education could also result in a direct monetary benefit to a high school student. Grades and class placement are among the factors considered by colleges and universities when evaluating prospective students for admission or financial aid awards. High grades in some subjects may result in college credit for the course, thereby enabling the student to save money by graduating early. Grade point average and class placement may also be considered by prospective employers.

Therefore, extra credit, grades, class placement, and other benefits related to education fall within the definition of anything of value for a school board member who is a student in the district. R.C. 102.03(D) prohibits a school board member, who is a student in the district, from using his position on school board to secure any of these kinds of benefits related to his education. The school board member would be prohibited from using his position of power and authority over officials and employees who are directly involved in the delivery of education to him to secure any benefits or detriments in connection with his education.

School district officials and employees who would be directly involved in the delivery of education to a student include, but are not limited to, the student's assigned teachers, coaches of sports in which the student participates, the principal and assistant principals in the building where his classes are held, and the advisors and guidance counselors who are assigned to work with the student. R.C. 102.03(D) would prohibit the student from participating in matters before the school board that would have definitely and directly affect the individual contracts or financial interests of these district officials and employees. However, R.C. 102.03(D) would not prohibit the student from participating, as a board member, in matters before the board that affect all teachers or administrators in the district in a uniform manner.

For example, if there were to be a specific job action before the board involving one of his teachers, the school board member who is a student in the district would be prohibited from participating, formally or informally, in that matter. He would be prohibited from voting on or deliberating about the matter, lobbying his fellow board members, or discussing the matter with district officials or employees.

R.C. 102.03(D) would not prohibit the school board member, though, from participating in matters before the board that affect all district officials and employees in a uniform way. For

example, the board member who is a student in the district would not be prohibited from participating in the board's review or decisions regarding a collective bargaining agreement affecting all teachers or other employees in the district or from participating in decisions affecting the budget and expenditures of the district and the school he attends.

R.C. 102.03(D) also prohibits a school board member who is a student in the district from participating in any matters that affect his own interests. For example, if the student is competing for scholarships or other benefits offered by the district, he would be prohibited from voting, discussing, deliberating, lobbying his fellow board members, or otherwise participating, formally or informally, when the matter is considered by the board. The student would be prohibited from participating in the board's consideration of applications from other individuals competing for the same benefit, as well as its consideration of his own application.

R.C. 102.03(E) also prohibits the school board member, who is a student in the district, from *soliciting* any benefit related to his education. For example, the school board member would be prohibited from asking one of his teachers to give him higher grades or higher class placement because of his position on the board.

Confidential Information—R.C. 102.03(B)

The school board member should also be aware of R.C. 102.03(B):

No present or former public official or employee shall disclose or use, without appropriate authorization, any information acquired by the public official or employee in the course of the public official's or employee's official duties that is confidential because of statutory provisions, or that has been clearly designated to the public official or employee as confidential when that confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary to the proper conduct of government business.

The school board member will be privy to confidential information about district administrators, teachers, employees, and fellow students. R.C. 102.03(B) will prohibit the board member from disclosing or using the information. There is no time limit on this prohibition, and it applies to the board member during his public service and after he leaves the board.

Other Matters

In a recent conversation, you have said that the student has asked a neighboring district to allow him to attend its high school as an open enrollment student. If he is *not* a student in the Green Local School District, R.C. 102.03(D) and (E) will not prohibit the school board member from fully participating in matters that affect the teachers, administrators, and other personnel of the district. However, the confidentiality prohibition in R.C. 102.03(B) applies to the board member regardless of whether he is a student in the district.

Finally, while you have not asked about it, you have also noted that another member of the board of education is the student's grandfather. The Ethics Law and related statutes do not prohibit two or more family members from serving as board members in the same school district.

However, the Ethics Law and related statutes do prohibit a school board member from taking any action to secure any benefit for a close family member, such as a spouse, parent, grandparent, child, grandchild, or sibling. See, generally, Adv. Op. No. 92-010. While this opinion applies the Ethics Law to the student school board member, this restriction applies to all board members and prohibits, for example, a school board member from participating in matters involving his or her own financial interests, and those of a family member or business associate.

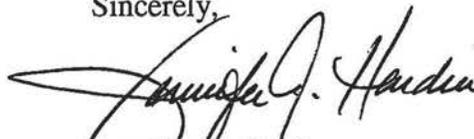
Therefore, should a matter come before the board that would definitely and directly affect the interests of a school board member, such as a decision to fund his official travel, another school board member who is his grandson or grandfather would be prohibited from taking any action on that matter. Also, if any matter comes before the board that definitely and directly affects an official, employee, or student of the district, and that person is a close family member of any school board member, the board member would be prohibited from participating in the matter. Because these two board members are also family members, both could be barred from participating in a matter before the board if it affects a person who is related to both of them, such as the child of one who is the parent of the other.

Conclusion

As explained below, the Ethics Law does not prohibit the student from running for a position on the district's board of education or, if elected, from serving as a board member. If elected, he will be prohibited from participating, as a board member, and as specifically described below, in any matters that affect school district officials or employees who are directly involved in his education. He is also prohibited from disclosing or using any confidential information he acquires as a board member.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on August 19, 2009. 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