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Paul M. Nick  
*Interim Executive Director*

March 30, 2011

Informal Opinion 2011-INF-0330

Robin Parker, General Counsel  
Miami University

Dear Ms. Parker:

On March 24, 2011, the Ohio Ethics Commission considered your December 20, 2010, letter asking it to clarify and reconsider portions of an informal advisory opinion issued to you last year. In that opinion, dated September 21, 2010, the Commission concluded that a member of the Miami University (University) Board of Trustees who was also President of the Cincinnati/Northern Kentucky Region of PNC-Bank would occupy a prohibited position of profit in a bond underwriting contract awarded by the University to the PNC-Capital Markets (PNC-CM).

The Commission recognizes the concerns of the University, the trustee, and you regarding this matter, and commends all of you for seeking the original advisory opinion and this reconsideration. You have asked for reconsideration and clarification of the September Opinion because the Commission may not have considered or been aware of several important facts. Specifically, you have stated that the trustee: (1) is not a true officer of PNC-CM or PNC-Bank; and (2) will not gain direct profit from the bank's contract with PNC-CM or PNC-Bank.

With respect to the first fact, you have explained that, although she has the title of President of the Cincinnati/Northern Kentucky Region of PNC-Bank, the trustee is not a true officer of PNC-Bank. You noted that the Commission has previously concluded that an officer is an employee with management responsibility in a corporation. Ohio Ethics Commission Advisory Opinion No. 78-006. You explained that the trustee has no managerial responsibility. You have explained that, as President of the Region, the trustee's role is that of a senior salesperson, and that her primary responsibilities are sales leadership and community relations within the region, performing tasks such as making sales calls, increasing the visibility and community ties of PNC-Bank in the region and other cross-channel marketing and sales duties. You have stated that any supervisory responsibilities the trustee may have in her role of Regional President are limited in scope, and that she does not act as a business unit manager.

With respect to the second fact, you have explained that the trustee will receive no definite and direct financial gain or benefit related to the carrying out and completion of any bond-servicing contract between the University and PNC-CM. As president of a PNC-Bank region, the trustee is not an employee of PNC-CM. She does not, and will not, receive any compensation (such as a commission or bonus) that is tied to any University contract with PNC-CM. Further, the trustee does not have an ownership interest in PNC-CM. Rather, she has negligible stock ownership interest in PNC Financial Services Group (PNC-FSG), which is the parent company of both PNC-Bank and PNC-CM. You have stated that she owns "far less" than one percent of the shares of PNC-FSG, and that her ownership interest is through stock options, restricted stock, and retirement plans provided by PNC to all of its employees.

For these reasons, you have posited that, as President of the regional PNC-Bank, the trustee merely has an employee relationship with PNC-Bank and not an owner relationship. In light of this additional and clarified information, you have asked that the Commission determine whether R.C. 2921.42(A)(3) would prohibit the University from contracting with PNC-CM to provide bond services. You have also asked that the Commission determine whether, as President of the regional PNC-Bank, the trustee would have an interest in any University bond or banking service contracts with PNC-CM or PNC-Bank.

#### **R.C. 2921.42(A)(3)—Position of Profit**

Based on the information you provided in your December 2010 letter, the Commission hereby reverses its conclusion regarding R.C. 2921.42(A)(3) and bond-servicing contracts in the September 2010 advisory opinion. Even though bonds are authorized by the board of trustees, the bond-servicing contracts will be awarded pursuant to an RFP process in which the evaluation of proposals and award of the contract is made by University staff, rather than by the Board. Therefore, the Board is not authorizing the bond-servicing contracts.

Further, the trustee is not an officer, employee, or owner of PNC-CM, and has no fiduciary responsibility over PNC-CM. If there were to be a bond-servicing contract between the University and PNC-CM, the trustee would not receive any definite and direct financial gain or benefit related to carrying out or completing the contract. Therefore, provided that any bond-servicing contract between the University and PNC-CM is awarded pursuant to the RFP process you described, the trustee would not occupy a prohibited position of profit in the prosecution of a contract authorized by the board of trustees.

#### **R.C. 2921.42(A)(4)—Interest in a Public Contract**

The Commission affirms its conclusion regarding R.C. 2921.42(A)(4). However limited her managerial responsibilities may be, the president of the Cincinnati/Northern Kentucky Region of PNC-Bank has a fiduciary interest in the contracts of that regional bank. Based on the facts presented, the Commission further concludes, because the president of the Cincinnati/Northern Kentucky Region of PNC-Bank is not an employee, owner, or officer of PNC-CM and has a negligible stockholding interest in PNC-FSG, she does not have a financial

or fiduciary interest in contracts of PNC-CM or the other regional or business entities of PNC-Bank.

Therefore, the restriction in R.C. 2921.42(A)(4) will not apply to the trustee regarding any bond-servicing contract between the University and PNC-CM. If there were to be a banking services contract between the University and a regional or business entity of PNC-Bank other than the Cincinnati/Northern Kentucky Region of PNC-Bank, the restriction in R.C. 2921.42(A)(4) will not apply to the trustee regarding that contract. In other words, the trustee would not have a prohibited interest in such a contract. However, if there were to be a banking services contract between the University and the Cincinnati/Northern Kentucky Region of PNC-Bank, the restriction in R.C. 2921.42(A)(4) will apply to the trustee regarding that contract. Such a contract is not absolutely prohibited provided that the trustee meets the exception set forth in R.C. 2921.42(C), as more fully explained in the September 2010 advisory opinion.

#### **Other Restrictions Discussed in September 2010 Advisory Opinion**

You did not ask the Commission to reconsider any of its conclusions in the September 2010 advisory opinion regarding R.C. 2921.42(A)(1), 102.03(D) and (E), and 102.04. This opinion does not alter any of the Commission's discussion or conclusions regarding the application of those statutes to the trustee. The Commission's conclusions on those restrictions continue to apply to the trustee.

For example, R.C. 2921.42(A)(1) prohibits the trustee from voting upon, discussing, or otherwise using her authority or influence to secure any allocation of University funds to PNC-Bank, PNC-CM, or any company under the PNC-FSG umbrella. The trustee is prohibited, for example, from discussing such contract matters with her fellow trustees and any University officials or employees.

R.C. 102.03(D) and (E) prohibit the trustee from participating in matters before the University that affect the interests of the PNC-Bank or its affiliated entities. The trustee is prohibited from participating in formal actions, such as Board votes or discussion, and informal discussions with trustees or staff, related to these matters.

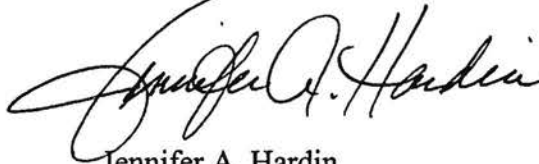
R.C. 102.04(A) prohibits the trustee from receiving compensation from the bank for performing services on matters pending before the University. This means she is prohibited from discussing the bank's interests or otherwise interacting with any University official or employee on any matter before the University affecting the bank.

Finally, R.C. 102.03(B) will prohibit the trustee from disclosing or using, without appropriate authorization, any confidential information she acquired during her service as a trustee.

Robin Parker  
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The Ohio Ethics Commission approved this informal advisory opinion at its meeting on March 24, 2011. 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 fluid and cursive, with a large initial "J" and "H".

Jennifer A. Hardin  
Chief Advisory Attorney