

OHIO ETHICS COMMISSION

Merom Brachman
Commission Chair

David E. Freel
Executive Director



8 East Long Street, 10th Floor
Columbus, Ohio 43215
Telephone: (614) 466-7090
Fax: (614) 466-8368
Website: <http://www.ethics.state.oh.us>

Advisory Opinion Number 2000-05
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Syllabus by the Commission:

- (1) A paid township volunteer firefighter is a "public official or employee" subject to the post-employment, confidentiality, and conflict of interest prohibitions of the Ohio Ethics Law found in Section 102.03 of the Revised Code;
- (2) A paid township volunteer firefighter is a person "employed by a . . . township" subject to the prohibition that limits compensation for representing others before the township as set forth in Section 102.04 of the Revised Code;
- (3) A paid township volunteer firefighter is a "public official" subject to the public contract prohibitions set forth in Section 2921.42 of the Revised Code;
- (4) A paid township volunteer firefighter is a "public servant" subject to the supplemental compensation prohibitions set forth in Section 2921.43 of the Revised Code.

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In order to provide clear guidance in the application of general provisions of Ohio's Ethics Laws to specific circumstances, the Ohio Ethics Commission will consider whether a paid township volunteer firefighter is subject to the prohibitions imposed by the Ohio Ethics Law and related statutes.

It must be noted that this opinion addresses the situation where a person serves as a paid volunteer firefighter in the township. This opinion does not address the situation where a person is a paid employee of a private fire company that contracts with the township.

Facts

You state that you are a volunteer firefighter for a township fire department and receive compensation from the township for each fire emergency for which you are called. You also state that, while performing your duties as a paid volunteer firefighter, you are covered by the township's liability insurance and workers' compensation insurance. Finally, you state that you own a business and would like to sell goods and services to the township, including the township fire department.

Brief Answer

As explained below, a paid township volunteer firefighter is a "public official or employee" subject to the conflict of interest, revolving door, and representation prohibitions set forth in the Ohio Ethics Law, found in Chapter 102. of the Ohio Revised Code. In addition, a paid township volunteer firefighter is a "public official" subject to the public contract prohibitions set forth in Section 2921.42 of the Revised Code. As a "public official," a paid township volunteer firefighter is a "public servant" subject to the supplemental compensation prohibitions of Section 2921.43 of the Revised Code.

Statutory Definitions in the Ethics Law and Related Statutes

The Ethics Commission is empowered to administer, interpret, and enforce Chapter 102., and Sections 2921.42, 2921.421, and 2921.43, of the Ohio Revised Code. See R.C. 102.02, 102.06, and 102.08. These statutes apply to officers, employees, and agents of the state and its political subdivisions, and, in some instances, to other public servants. Statutory definitions provided in R.C. Chapters 102. and 2921. identify individuals who are subject to the prohibitions in these statutes. R.C. 102.01(B) and (C) and R.C. 2921.01.

R.C. 102.01(B) defines the term "public official or employee" as "any person who is elected or appointed to an office or is an employee of any public agency." (Emphasis added.) R.C. 102.01(C) defines the term "public agency" as:

[T]he general assembly, all courts, any department, division, institution, board, commission, authority, bureau or other instrumentality of the state, a county, city, village, township, and the five state retirement systems, or any other governmental entity. (Emphasis added.)

The prohibition set forth in R.C 102.04(C) applies to any person "who is elected or appointed to an office of or employed by a county, municipality, township, or any other governmental entity, excluding the courts."

R.C. 2921.01(A) defines the term "public official" for purposes of R.C. 2921. as:

[A]ny elected or appointed officer, or employee, or agent of the state or any political subdivision, whether in a temporary or permanent capacity, and includes, but is not limited to, legislators, judges, and law enforcement officers. (Emphasis added.)

The Ethics Commission has held that, because of these definitions, township employees and officials are subject to the prohibitions of the Ohio Ethics Law found in Chapter 102., and Sections 2921.42 and 2921.43, of the Revised Code. Ohio Ethics Commission Advisory Opinions No. 74-005, 79-003, and 91-001, respectively.

The issue is whether a volunteer firefighter is a township "employee" if he receives compensation from the township for each fire emergency to which he is called. If a volunteer

firefighter is a township "employee," then the firefighter will be subject to the prohibitions of the Ohio Ethics Law found in Chapter 102., and Sections 2921.42 and 2921.43, of the Revised Code.

Definition of the Word Employee

The words "employed" and "employee" are undefined for purposes of R.C. 102.01(B), R.C. 102.04(C), and R.C. 2921.01(A). Absent a statutory definition, words used in a statute are to be given their ordinary meaning. R.C. 1.42. State ex rel. Celebrezze v. Board of County Commissioners, 32 Ohio St. 3d 24, 512 N.E.2d 332 (1987). The dictionary definition of the word "employ" is "to hire or engage the services of (a person)." Random House Webster's Unabridged Dictionary, 638 (1997). The word "employee" is defined as "a person working for another person or a business firm for pay." Id.

R.C. 505.38(A) authorizes a board of township trustees to employ firefighters for the township and establish the firefighter's compensation. R.C. 505.38(A) reads in pertinent part:

The board shall provide for the employment of such firefighters as it considers best, and shall fix their compensation.

R.C. 505.38(A) includes volunteer firefighters because it goes on to mandate the qualifications of volunteer firefighters, and reads in pertinent part:

No person who is appointed as a volunteer firefighter of the fire department of any township or fire district after July 1, 1979, shall remain in such a position unless either of the following applies:

(1) Within one year of the appointment the person has received a certificate issued under former section 3303.07 of the Revised Code or division (C)(1) or (2) of section 4765.55 of the Revised Code evidencing satisfactory completion of a firefighter training program.

(2) The person began serving as a permanent full-time paid firefighter with the fire department of a city or village prior to July 2, 1970, or as a volunteer firefighter with the fire department of a city, village, or other township or fire district prior to July 2, 1979, and receives a certificate issued under division (C)(3) of section 4765.55 of the Revised Code.

No person shall receive an appointment under this section after July 1, 1979, in the case of a volunteer firefighter, unless the person has, not more than sixty days prior to receiving such appointment, passed a physical examination, given by a licensed physician, showing that the person meets the physical requirements necessary to perform the duties of the position to which the person is appointed as established by the board of township trustees having jurisdiction over the appointment. The appointing authority shall, prior to making any such appointment, file with the Ohio police and fire pension fund or the local volunteer fire fighters' dependents fund board a copy of the report or findings of said licensed physician. The professional fee for such physical examination shall be paid for by the board of township trustees.

Therefore, it is apparent that a paid township volunteer firefighter is a person with statutorily mandated qualifications who is hired or engaged by the board of trustees of a township for the specific work of performing fire fighting services. The volunteer firefighter may receive compensation from the township as consideration for the service he performs in each fire emergency for which he is called. If a volunteer firefighter receives compensation for his services, then it is clear that a volunteer firefighter falls within the dictionary definition of the word "employee" because he is a person hired or engaged to provide services by another person for pay.

Judicial Precedent

The Courts in Ohio have also examined the status of volunteer firefighters. In Jaeger v. Wracker, 13 Ohio App. 3d 341, 343 (Lorain County 1983), the court addressed the issue of the removal of a volunteer firefighter by the board of township trustees without following statutory procedures, requiring good cause and notice of hearing, for the removal of township firefighters. The court determined that a paid volunteer firefighter is considered an "employee" of the township holding:

[V]olunteer firemen are appointed by the trustees in the same manner as paid firemen. Both volunteer and paid firemen are considered "employed," and both have their compensation fixed by the board of trustees.

The court went on to state:

Where state law gives an employee the right to continued employment absent good cause for discharge, a legitimate property interest in that employment is created, and the holder of that interest must be given procedural due process before he may be deprived of that interest. (Emphasis added.)

Thus, the court held that the failure of the board of township trustees to follow the statutory procedures for the removal of a township firefighter from his employment deprived the volunteer firefighter of a Constitutionally protected property right in his continued employment without due process of law and violated his civil rights under Section 1983, Title 42, U.S. Code. See also State ex rel. Flight v. Copley Twp. Bd. of Trustees, No. 12123 (Oct. 9, 1985), Summit County Court of Appeals, unreported (the Ninth District Court of Appeals again held that the removal procedures of R.C. 733.35 through 733.39 apply to terminations of volunteer township firefighters) and Barnes v. Sandy Twp. Bd. of Trustees, No. CA-8377 (June 25, 1991), Stark County Court of Appeals, unreported (the Fifth District Court of Appeals, quoting Jaeger, held that a paid township volunteer firefighter had a protected property right in his continued employment with the township and may not be deprived of that right without due process).

Attorney General Precedent

The Ohio Attorney General has also recognized the holding of Jaeger. The Attorney General, in Opinion No. 90-037, addressed the issue of a member of a township board of trustees simultaneously being an employee of a private fire company that contracted with the township.

In determining that, as an employee of a private fire company, the trustee was not a township employee but had a common-law conflict of interest preventing him from participating

in matters involving the contract between the township and his employing private fire company, the Attorney General stated:

Volunteer firemen of a township fire department are appointed by the board of township trustees in the same manner as regular paid firemen of the township fire department. Jaeger v. Wracker, 13 Ohio App. 3d 341, 343, 469 N.E.2d 857, 860 (Ct. App. Lorain County 1983); see also R.C. 505.38(A) (a board of township trustees "shall provide for the employment of such fire fighters as it considers best"). Additionally, the compensation for volunteer and regular firemen of a township fire department is fixed by the board of township trustees. Jaeger v. Wracker, 13 Ohio App. 3d at 343, 469 N.E.2d at 860; see R.C. 505.38(A) (a board of township trustees shall fix the compensation of fire fighters in the township fire department). Consequently, volunteer firemen of a township fire department are employees of the township. Jaeger v. Wracker, 13 Ohio App. 3d at 343, 469 N.E.2d at 860; see R.C. 505.011 (a trustee acting as a volunteer fireman is considered an employee of the township); R.C. 505.41 ("persons employed by a township on a part-time basis to operate or maintain fire-fighting equipment, or persons employed in any manner incidental to the operation or maintenance of such equipment, are township employees for the purposes of workers' compensation insurance, the same as though regularly employed as designated in section 4123.01 of the Revised Code"). Members of a private fire company, however, are not employees of the township. See Op. No. 80-075; 1956 Op. No. 7464; see also Schroeder v. Moore. Further, the members of a private fire company which contracts with a township are not paid by the board of township trustees, but rather are paid by the private fire company. (Emphasis added.)

In addition, the Attorney General stated in Attorney General Opinion No. 81-004, "[i]t is my understanding that the volunteer firefighters are not, in fact, volunteers but, rather, receive a sum of money for each fire emergency for which they are called." (Emphasis added.)

In Attorney General Opinion No. 81-004, it was determined that the public positions of city auditor and volunteer firefighter for the city were incompatible due to a common-law conflict of interest. Attorney General Advisory Opinion No. 79-111 explains that "[t]he common law test of incompatibility is applicable to the simultaneous holding of a public office and a public employment by the same person." (Emphasis added.) The fact that the Attorney General applied compatibility analysis to determine whether a city auditor could simultaneously serve as a volunteer firefighter further substantiates the fact that a volunteer firefighter holds a position of public employment, because if a volunteer firefighter was not a public employee, then the common law test of incompatibility would be inapplicable since the same person would not simultaneously hold a public office.

Application of Precedent to the Ethics Law and Related Statutes

The holdings of the courts in Jaeger and its progeny, and the conclusions of the Attorney General described above, are consistent determinations that a paid volunteer firefighter is an "employee" of his political subdivision. These holdings are consistent with the use of the dictionary definition of the word "employee" as "a person working for another person or a business firm for pay."

An argument has been set forth that because a paid volunteer firefighter's compensation would be irregular, and probably, a small amount, a volunteer firefighter is something less than

an "employee" and not subject to the Ohio Ethics Law and related statutes. However, the Ethics Commission has consistently held that, for purposes of the prohibition against a public official securing public employment for a family member, "an employment contract could be for full-time, part-time, temporary, or permanent employment, in the classified or unclassified civil service, or non-civil service in nature." See Adv. Op. No. 90-010. See also Adv. Op. No. 93-005. If the Commission were now to hold that, because it is irregular or compensated at an insignificant level, compensated service as a volunteer firefighter is not public employment, that holding would be inconsistent with Advisory Opinion No. 90-010. In such an instance, a township trustee or other official would not be prohibited from using the authority or influence of his public office to secure a position of volunteer firefighter for a family member but, under the holding of Advisory Opinion No. 90-010, the trustee or other official would be prohibited from securing a part-time non-firefighter position for a family member.

Therefore, consistent with the holdings of the court in Jaeger and its progeny and the Attorney General Opinions described above, the Commission determines that a paid volunteer firefighter is an "employee" of his political subdivision for purposes of R.C. 102.01(B), 102.04(C), and R.C. 2921.01(A). A paid township volunteer firefighter is, therefore, subject to the post-employment, confidentiality, and conflict of interest prohibitions in R.C. 102.03, the representation restrictions in R.C. 102.04(C), the public contract restrictions in R.C. 2921.42, and the supplemental compensation restrictions in R.C. 2921.43.

Conclusion

As explained above, a paid township volunteer firefighter is a "public official or employee" subject to the conflict of interest, revolving door, and representation prohibitions set forth in the Ohio Ethics Law, found in Chapter 102. of the Ohio Revised Code. In addition, a paid township volunteer firefighter is a "public official" subject to the public contract prohibitions set forth in Section 2921.42 of the Revised Code. As a "public official," a paid township volunteer firefighter is a "public servant" subject to the supplemental compensation prohibitions of Section 2921.43 of the Revised Code.

This advisory 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.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that: (1) A paid township volunteer firefighter is a "public official or employee" subject to the post-employment, confidentiality, and conflict of interest prohibitions of the Ohio Ethics Law found in Section 102.03 of the Revised Code; (2) A paid township volunteer firefighter is a person "employed by a . . . township" subject to the prohibition that limits compensation for representing others before the township as set forth in Section 102.04 of the Revised Code; (3) A paid township volunteer firefighter is a "public official" subject to the public contract prohibitions set forth in Section 2921.42 of the Ohio Revised Code; and (4) A paid township volunteer firefighter is a "public servant" subject to the supplemental compensation prohibitions set forth in Section 2921.43 of the Ohio Revised Code.

Merom Brachman
Merom Brachman, Chair
Ohio Ethics Commission