

# OHIO ETHICS COMMISSION

Sarah M. Brown, *Chairman*  
Robert Browning, *Vice Chairman*



8 East Long Street, 10<sup>th</sup> Floor  
Columbus, Ohio 43215  
Telephone: (614) 466-7090  
Fax: (614) 466-8368  
Web site: [www.ethics.ohio.gov](http://www.ethics.ohio.gov)

David E. Freel, *Executive Director*

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## **INFORMATION SHEET: OPINION NO. 2007-01** **COUNCIL MEMBER EMPLOYED BY A COLLEGE**

### **What is the question addressed in the opinion?**

Does the Ethics Law prohibit a member of village council, who is also employed with a college, from participating in matters before council that affect the college?

### **What is the answer in the opinion?**

The conflict of interest provisions in Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a member of village council, who is also employed with a college, from participating in any matter before council if the college has a definite and direct interest in the matter.

However, Divisions (D) and (E) of Section 102.03 of the Revised Code do not prohibit a village council member, who is also employed with a college, from participating in any matter before council in which the college has some indirect or indefinite interest, or any matter in which all or most residents or businesses in the village, including the college, have an interest.

### **To whom does this opinion apply?**

This opinion applies to any public official or employee of any public agency who is also employed by a college or university.

### **How and when did the opinion become effective?**

The opinion became effective upon acceptance by the Commission.

### **For More Information, Please Contact:**

David E. Freel, Executive Director, or  
Jennifer A. Hardin, Chief Advisory Attorney  
(614) 466-7090

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IT IS NOT AN ETHICS COMMISSION ADVISORY OPINION.  
ADVISORY OPINION NO. 2007-01 IS ATTACHED.**

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Advisory Opinion  
Number 2007-01  
January 17, 2007

Syllabus by the Ohio Ethics Commission:

- (1) Conflict of interest provisions in Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a member of village council, who is also employed with a college or university, from participating in any matter before council if the college or university has a definite and direct interest in the matter;
- (2) Divisions (D) and (E) of Section 102.03 of the Revised Code do not prohibit a village council member, who is also employed with a college or university, from participating in any matter before council in which the college or university has some indirect or indefinite interest, or any matter in which all or most residents or businesses in the village, including the college or university, have an interest.

\* \* \* \* \*

The Commission has been asked about the application of the Ethics Law to council members in a statutory village who are also employees of a private college located within the corporate limits of the village. The college is the single largest employer in the village. Individuals affiliated with the college are commonly elected to serve on the six-member village council. Currently, one member of council is the controller of the college, which is an employment-at-will position. Another council member is a tenured faculty member at the college and is married to a professional staff member at the college.

There are two questions before the Commission. The first is whether the law prohibits these council members from participating in matters before council that affect the college because of each member's particular affiliation with the college. The second involves the kinds of matters to which any bar on participation would apply.

### **Brief Answer**

As explained more fully below, a village council member who is an employee of a college is prohibited from participating in any matter where the college has a definite and direct interest. Examples of matters in which a college would have a definite and direct interest include: (1) zoning, development, and land use matters that affect college-owned property or property located directly adjacent to the college; (2) regulatory matters affecting the college, such as code enforcement inspections of college property or college operations that are conducted by village officials or employees; (3) awards, grants, or contributions from the village to the college; and (4) contracts for goods or services between the village and the college.

A village council member who is an employee of a college is not prohibited from participating in any matter where the college does not have a definite and direct interest. Examples would include matters in which the college has some indirect or indefinite interest, such as taxes affecting individuals employed within the village, and matters involving general legislation that provides a uniform benefit or detriment to all citizens in the jurisdiction, such as sewer or water rates.

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

Conflict of interest provisions in R.C. 102.03(D) and (E) read:

- (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 village council member is a "public official" subject to R.C. 102.03(D) and (E). R.C. 102.01(B) and (C); Ohio Ethics Commission Advisory Opinion No. 93-006. R. C. 102.01(B) excludes from the definition of "public official or employee" any person who is "a . . . professor whose position does not involve the performance of, or authority to perform, administrative or supervisory functions." However, a village council member *is* a public official. The fact that he or she is also a professor does not affect his or her status as a council member.<sup>1</sup>

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<sup>1</sup> See also 2000 Ohio Att'yGen.Ops. No. 2000-015 (a faculty member at a public university, who also serves on an airport authority board, is subject to conflict of interest when the university's interests are before the airport board).

Compensation that a public official receives from public employment is within the definition of “anything of value,” as is any beneficial or detrimental economic impact of a decision made by a public governing board. R.C. 1.03, 102.01(G). Adv. Ops. No. 89-003 and 90-012.

### **Conflict of Interest and Employer**

R.C. 102.03(D) prohibits the official from using his or her position to secure a definite and direct benefit or avoid a definite and direct detriment for any other party if the relationship between the official and the party is such that the benefit to the other party will have a substantial and improper influence upon the official such that his or her objectivity or independence of judgment is impaired. Adv. Ops. No. 88-004, 88-005, and 89-005. R.C. 102.03(E) prohibits a public official from soliciting or accepting anything of value for any party with whom the official has a close relationship. The purpose of these restrictions is to ensure that, when making a decision in his or her public role, a public official is not substantially and improperly influenced by the impact of the decision on the official’s own interests or the interests of other parties with whom the official has close family, economic, business, or other connections. Adv. Ops. No. 91-001, 91-004, and 96-004.

An employer holds a position of power and authority over the hiring, compensation, discipline, and termination of its employees. Adv. Ops. No. 89-008 and 91-006. As a result, the relationship between a public official and his or her outside employer is such that the official could be substantially and improperly influenced if a decision on a matter before the official’s agency resulted in a definite and direct thing of value for his or her employer. A public employer has the same, or essentially the same, power and authority over its employees as a private employer. Adv. Op. No. 91-006.

R.C. 102.03(D) and (E) prohibit a public official or employee from soliciting, or using his or her position to secure, a benefit for any public or private employer. Adv. Op. No. 89-008 and 91-006. As employers, colleges and universities have control over awards, salaries, promotions, sabbaticals, and grants for all faculty members, regardless of their tenure status. Therefore, R.C. 102.03(D) and (E) prohibit a village council member who is an employee of a college, regardless of the nature of the employment, from voting, deliberating, participating in discussions, or otherwise using his or her official position, as a village council member, formally or informally, in any matter that would provide a definite and direct pecuniary benefit or detriment to the college.<sup>2</sup>

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<sup>2</sup> One of the parties interested in this issue has inquired whether neighboring jurisdictions have considered it. See West Virginia Ethics Commission Adv. Op. No. 2006-09 (a city mayor employed by a state university was prohibited from voting on a property development matter before the city that affected the university); Pennsylvania Ethics Commission Adv. Op. No. 00-606 (a borough council member who was a faculty member at a local private college was prohibited from participating in matters involving a lawsuit between the college and the borough) and Adv. of Counsel 98-557 (a borough council member who was vice-president of a college that was the largest

Whenever the college will receive a definite and direct benefit or suffer a definite and direct detriment as a result of the village's decisions, a council member employed by the college is prohibited from participating, in any way, in the village's activities on the matter. Adv. Op. No. 97-002. If the matter will affect the college in a selective, differential, or disproportionate way from other businesses or citizens, a council member employed by the college is prohibited from participating. Adv. Op. No. 93-016. The council member is prohibited from participating by voting, discussing, deliberating about, making recommendations, or taking any other action within the scope of his or her authority as a council member. He or she is also prohibited from formally or informally lobbying other council members or village officials, directing other village personnel, and using his or her council position in any improper way, to secure a particular outcome on the matter.

Examples of matters that would have a definite and direct impact on a college's interest would include specific zoning, development, and land use matters affecting property owned by the college or directly adjacent to property owned by the college. Also included would be regulatory matters such as code enforcement inspections conducted by village officials and employees that involve college property or college operations. Additionally, matters involving village funding provided to the college and the negotiation or award of contracts between the village and the college, such as contracts under which the village would provide fire, ambulance, or police services to the college, would be matters in which the college has a definite and direct interest. R.C. 102.03(D) and (E) would prohibit the council members who are employed by the college from participating, in any way, in these matters.<sup>3</sup>

The law does *not* prohibit a council member employed by the college from participating in a matter before council in which the college has a speculative, minimal, undefined, or peripheral interest. Adv. Op. No. 88-005. For example, in Advisory Opinion No. 85-006, the Commission explained that a public official is not prohibited from participating or voting on general legislation that provides a uniform benefit or detriment to all citizens in a jurisdiction, including matters involving taxes, sewer and water services, and some zoning code revisions. See also Adv. Ops. No. 88-004.

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landowner and employer in the borough was required to abstain from matters that would affect the college's interests; Michigan Board of Ethics Adv. Op. No. ETH 76-EA-8 (a full-time paid professor and dean at a public college would have a direct financial and personal interest in the college such that her independence of judgment and action would be impaired if she were to serve in a public position with regulatory authority over the college); and New York State Ethics Commission Adv. Op. No. 96-30 (a county legislator, who was also a director at a state university, must recuse himself from all matters before the county involving the university *and* the community college in the county).

<sup>3</sup> A private college, like any private employer, is a "business associate" of a person who serves as an employee of the college. Adv. Ops. No. 85-004 and 86-002. Therefore, R.C. 2921.42(A)(1) also prohibits any employee of the college, from participating, as a village council member, in matters that directly affect any contracts between the village and the college.

One specific situation that has been raised is whether the council members employed by the college are prohibited from participating in matters regarding a rate increase for the village's municipal water and sanitary sewer system because the college is a significant user of the system. Village council members employed by the college would not be prohibited from participating in a water or other service rate increase that would affect *all* residents or businesses in the village, even if some residents or businesses use or consume more of the services provided by the village.

The council members employed by the college would also not be prohibited from participating in a request by an individual resident or business of the village, other than the college, for a sanitary sewer service rate adjustment. The impact on the college of council's decision regarding an individual customer's request for a rate adjustment, based on the fact that both the customer and the college use the water system, is speculative and indefinite.

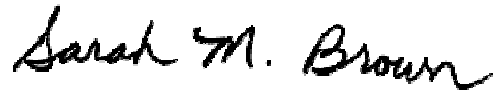
### **Council Members Who Are Students**

Another issue is whether a council member who is a student at the college can participate in council matters that affect the college. As noted above, a public official is prohibited from participating in a matter before his or her public agency if the matter will result in a definite and direct benefit or detriment to any party with whom the official has a close family, economic, business, or fiduciary relationship. A public official is not prohibited, by R.C. 102.03(D) and (E), from participating in a matter that affects the interests of a party with whom he or she has other, more indirect, kinds of relationships. Adv. Op. No. 89-005, 89-008, and 90-008 (matters affecting an association of which an official is a mere member or the clients of a law firm by which the official is employed).

The relationship between a student and the college that he or she attends is not an employer-employee or "business association" relationship. A student and the college that he or she attends are not acting together for a common business purpose. *Id.* Further, a college does not exercise the same kind of control or influence over the students who matriculate at the college as it does over an individual it employs. For that reason, R.C. 102.03(D) and (E) do not prohibit a council member who is a student at the college from participating in matters affecting the interests of the college, unless specific facts demonstrate that the student is also employed by the college or has some other economic interest in the matter before council. This opinion does not address the question of the application of the law to a student who is also an employee of the college or has some other economic interest in the matter before council.

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) Conflict of interest provisions in Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a member of village council, who is also employed with a college or university, from participating in any matter before council if the college or university has a definite and direct interest in the matter; (2) Divisions (D) and (E) of Section 102.03 of the Revised Code do not prohibit a village council member, who is also employed with a college or university, from participating in any matter before council in which the college or university has some indirect or indefinite interest, or any matter in which all or most residents or businesses in the village, including the college or university, have an interest.

A handwritten signature in black ink that reads "Sarah M. Brown". The signature is written in a cursive style with a horizontal line underneath it.

Sarah M. Brown, Chairman  
Ohio Ethics Commission