

OHIO ETHICS COMMISSION

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INFORMATION SHEET: ADVISORY OPINION NO. 2007-02 **STUDENT TRUSTEE SERVING WITH** **STUDENT GOVERNMENT BODY**

What is the question addressed in the opinion?

Can a student serving as a member of the board of trustees for a state university also serve on the student government body for the university?

What is the answer in the opinion?

A student serving as a member of the board of trustees of a university is not prohibited from serving on the student government body for the university. Because the authority of a student trustee is limited, he or she does not exercise sovereign authority and is not an officer, or appointed to an office, of the state. Student trustees are not subject to the revolving door, conflict of interest, and confidentiality prohibitions contained in R.C. Chapter 102., or the public contract prohibitions contained in Section 2921.42.

To whom do the conclusions in this opinion apply?

The conclusions apply to any student who has been appointed by the Governor to serve as a student member of the board of trustees of a state university.

How and when did the opinion become effective?

The opinion became effective upon acceptance by the Commission.

For More Information, Please Contact:

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IT IS NOT AN ETHICS COMMISSION ADVISORY OPINION.
ADVISORY OPINION NO. 2007-02 IS ATTACHED.**

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Advisory Opinion
Number 2007-02
August 23, 2007

Syllabus by the Ohio Ethics Commission:

- (1) A student serving as a member of the board of trustees of a state university, pursuant to a provision of the Ohio Revised Code, is not a “public official or employee” subject to the restrictions in Chapter 102., or a “public official,” subject to the restrictions in Section 2921.42, of the Revised Code;
- (2) A student trustee of a state university is not prohibited from also serving as an officer of the university student government body.

* * *

The Ohio Ethics Commission has been asked whether the Ohio Ethics Laws and related statutes prohibit a student trustee of a state university (university) from also serving as the vice-president of the university’s student government body.

Brief Answer

As explained below, student trustees are not public officials or employees subject to the prohibitions in R.C. Chapter 102. or Section 2921.42. For that reason, the Ohio Ethics Laws and related statutes do not prohibit a student trustee of the university from simultaneously serving as the vice-president of the university’s student government body.

Individuals Subject to the Ethics Law

The Ethics Commission is statutorily empowered to administer, interpret, and enforce Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code. See R.C. 102.02, 102.06, and 102.08. The statutes under the Commission’s jurisdiction include the financial disclosure law (R.C. 102.02), as well as prohibitions against public officials and employees misusing their public position for their own benefit or to benefit their family members or business associates (R.C. 102.03, 102.04, 2921.42, and 2921.43).

The Ethics Law and related statutes include definitions that set forth the individuals who are subject to the prohibitions. The restrictions in Chapter 102. apply to any “public official or employee.” 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.” 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.

The restrictions in R.C. 2921.42 apply to any “public official.” R.C. 2921.01 (A) defines the term “public official” as:

[A]ny elected or appointed officer, or employee, or agent of the state or any political subdivision thereof, whether in a temporary or permanent capacity, and including without limitation legislators, judges and law enforcement officers. (Emphasis added.)

Because a state university is a body politic and corporate and an instrumentality of the state, it is both a public agency and a state entity. See R.C. 3345.011; Collins v. university of Cincinnati (1981), 3 OApp3d 183. Officials and employees of a state university are subject to R.C. 102.03 and 2921.42. A student trustee is not an “employee” of the university. However, the trustee may be either “appointed to an office” or an “appointed officer” of the university.

Under Ohio law, a person who holds an “office” is an “officer.” Muskingum Co. Democratic Exec. Comm. v. Burrier, 31 Ohio Op. 570, 572 (C.P. Muskingum County 1945). See also Ohio Ethics Commission Advisory Opinion No. 85-005. The Ethics Commission has established five elements that, in combination, will determine whether a person is “appointed to an office.” The Commission considers whether the person: (1) is appointed; (2) has a title; (3) exercises a function of government concerning the public; (4) is not subject to a contract of employment; and (5) exercises the “sovereign power” of government. See Adv. Ops. No. 74-007, 75-004, and 77-004. In Advisory Opinion No. 77-004, the Commission held that sovereign power “includes the exercise of a duty entrusted to one by virtue of statute or some other public authority, a duty that is not merely clerical, but that involves discretionary, decision-making qualities.” See Adv. Op. No. 75-004. See also State ex rel. Landis v. Butler, 95 Ohio St. 157 (1917).

With respect to the final element, if the statutes that create a public position do not confer the power to exercise final decision-making authority upon person serving in the position, the person does not exercise sovereign power and is not an officer, or appointed to an office, of a public agency. Board members who are not officers, or appointed to an office, of a public agency

are not subject to the prohibitions in Chapter 102. and R.C. 2921.42. See Adv. Op. No. 85-005 (the members of a board that functions exclusively for advisory purposes are not subject to the Ethics Law). The Commission has recognized that sovereign authority is a key consideration in determining whether a person is subject to the restrictions in R.C. Chapter 102. and Section 2921.42.

Student Trustees—R. C. 3359.01

Various provisions of the Revised Code set forth the appointment and terms of university trustees. R.C. 3335.02 (Ohio State University), 3337.01(Ohio University), 3339.01 (Miami University), 3341.02 (Bowling Green State University), 3343.02 (Central State University), 3344.01 (Cleveland State University), 3352.01 (Wright State University), 3356.01 (Youngstown State University), 3359.01 (Akron University), 3361.01 (University of Cincinnati), 3362.01(Shawnee State University) and 3364.01 (University of Toledo). On each board of trustees, two members of the board are required to be students attending the university. Id. A board of trustees of a state university is statutorily empowered to exercise decision-making authority and has the independent power to bind the state. See, e.g., R.C. 3335.03, 3335.10, 3339.05, 3343.05, and 3344.04.

A student trustee of a state university meets some of the criteria of a public official. He or she is appointed and has a title. The Governor, with the advice and consent of the Senate, appoints the student trustees from a group of five candidates selected pursuant to a procedure adopted by the university's student government and approved by the university's board of trustees. See, e.g., R.C. 3335.02(B) (OSU) and 3359.01(B) (AU). Further, a student trustee is not subject to a contract of employment. The student trustee may be exercising a function of government concerning the public.¹ The key question is whether a student trustee is exercising sovereign authority.

Student trustees represent and provide information about the views and interests of students on matters before the board of trustees. In so doing, student trustees act in an advisory, rather than a decision-making, capacity. In a 1997 advisory opinion on another topic, the Attorney General acknowledged the value, and the limited role, of student trustees in the operation of state universities. After listing the limitations on the student trustee's authority, the Attorney General's Office stated: "A student trustee's interest in the institution and its operation is the reason for permitting the student to serve on the board." 1997 Ohio Atty.Gen.Ops. No. 97-061, at 2-379.

¹ For example, while it is not germane to this opinion and the Commission is not reaching a conclusion on this question, a student trustee of a state university may be a "public servant," and subject to the supplemental compensation restrictions set forth in R.C. 2921.43, because a student trustee is performing, *ad hoc*, a governmental function.

However, while their service to the university is valuable, student trustees do not have the authority to exercise the sovereign power of the state. Student trustees are subject to statutory limitations upon their powers. The student trustees are not: (1) entitled to vote; (2) considered to be board members for purposes of determining a quorum; or (3) entitled to attend executive sessions. See, e.g., R.C. 3335.02(B) (OSU) and 3359.01(B) (AU). These limitations do not apply to the other university trustees.

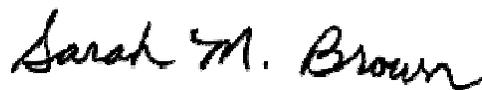
Because their authority is limited, and they do not exercise the sovereign power of the state, student trustees are not officers, or appointed to an "office," of the state. For that reason, student trustees are not subject to the revolving door, conflict of interest, and confidentiality prohibitions contained in R.C. Chapter 102., or the public contract prohibitions contained in Section 2921.42.

The Ethics Law and related statutes do not prohibit a student trustee from also serving as an officer of the university student government body. The law also does not impose any limits on a student trustee with respect to his or her service in both positions.

While the Ethics Law does not restrict a student trustee regarding his or her service on both the board of trustees and student government body, he or she should consult with the chief counsel for the university to determine whether his or her responsibilities to both organizations can be adequately performed while serving in both positions. There may also be guidelines in the bylaws or procedures of the student government body, or the parliamentary authority of the board of trustees, that would be instructive for the student trustee as he or she weighs the responsibilities of both positions.

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 student serving as a member of the board of trustees of a state university, pursuant to a provision of the Ohio Revised Code, is not a "public official or employee" subject to the restrictions in Chapter 102., or a "public official," subject to the restrictions in Section 2921.42, of the Revised Code; and (2) A student trustee of a state university is not prohibited from also serving as an officer of the university student government body.



Sarah M. Brown, Chairman
Ohio Ethics Commission