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INFORMATION SHEET: ADVISORY OPINION NO. 2010-03
NEPOTISM RESTRICTIONS

What are the questions addressed in the opinion?

Can public officials or employees hire their family members or recommend their family members for a public job? If a public official's family member is lawfully hired, can the official participate in matters affecting the family member's employment? Can two family members serve the same public agency?

What are the answers in the opinion?

Public officials and employees cannot: (a) hire or use their positions to secure employment for their family members; (b) recommend or nominate their family members for public jobs with their own, or any other, public agencies; or (c) give to their family members, or use their positions to secure for their family members, raises, promotions, job advancements, overtime pay or assignments, favorable performance evaluations, or any other things of value related to their employment. Two family members can work for the same public agency, provided that both are able to comply with these restrictions.

What prompted this opinion?

As a reminder to all public officials and employees in the state, the Commission is issuing this advisory opinion that gathers information from its many previous advisory opinions on nepotism and provides examples of the law.

When will the conclusions of the opinion become effective?

The opinion became effective upon approval by the Commission.

For More Information, Please Contact:

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IT IS NOT AN ETHICS COMMISSION ADVISORY OPINION.
ADVISORY OPINION NO. 2010-03 IS ATTACHED.**

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Advisory Opinion
Number 2010-03
May 25, 2010

Syllabus by the Commission:

- (1) Division (A)(1) of Section 2921.42 of the Ohio Revised Code provides that no public official shall knowingly “authorize or employ the authority or influence of” the official’s office to secure authorization of the employment of a family member;
- (2) Divisions (D) and (E) of Section 102.03 of the Ohio Revised Code prohibit public officials and employees from using or authorizing the use of their public positions to secure employment, or employment-related benefits, for their family members;
- (3) Public officials and employees cannot: (a) hire or use their positions to secure employment for their family members; (b) recommend or nominate their family members for public jobs with their own, or any other, public agencies; or (c) give to their family members, or solicit or use their positions to secure for their family members, raises, promotions, job advancements, overtime pay or assignments, favorable performance evaluations, or any other things of value related to their employment.

* * *

For more than twenty-five years, the Commission has issued many advisory opinions about the nepotism restrictions in the Ethics Law and related statutes. The Commission has explained that the public contract (R.C. 2921.42(A)(1)) and conflict of interest (R.C. 102.03(D) and (E)) restrictions apply to public officials and employees whose family members are seeking employment, or already working, with the agencies they serve. In this opinion, the Commission gathers information from its advisory opinions on nepotism and provides examples of the restrictions in the law.

Public Contract Law—R.C. 2921.42(A)(1)

R.C. 2921.42(A)(1) provides that no public official shall knowingly:

Authorize, or employ the authority or influence of the public official's office to secure authorization of any public contract in which the public official, a member of the public official's family, or any of the public official's business associates has an interest.

A "**public official**" includes: "[A]ny elected or appointed officer, or employee, or agent of the state or any political subdivision, whether in a temporary or permanent capacity." R.C. 2921.01(A). The restriction in R.C. 2921.42(A)(1) applies to all individuals who are elected or appointed to, or employed by, any public agency, including but not limited to any state agency, county, city, township, school district, public library, and regional authority. The restriction applies regardless of whether the person is: (1) compensated or uncompensated; (2) serving full time or part time; or (3) serving in a temporary or permanent position.

A "**public contract**" is the purchase or acquisition of property or services, by or for the use of any public agency, specifically including the employment of an individual by the state, any of its political subdivisions, or any agency or instrumentality of either. A public contract can be a written or oral agreement. Since 1985, before the General Assembly amended the definition in 1994 to specifically include employment, the Commission had consistently held that the "purchase or acquisition . . . of services" includes employment. Ohio Ethics Commission Advisory Opinions No. 85-011, 90-010, and 92-012. See also *Walsh v. Bollas* (1992), 82 Ohio App. 3d 588. A person has an interest in one's own employment. See, generally, *State v. Urbin* (2002), 148 Ohio App. 3d 293, 100 Ohio St. 3d 1207 (2003).

"**Authorizing**" a contract includes voting on, signing, or taking any other action to award the contract. Adv. Op. No. 2001-02. Employing the "**authority or influence**" of one's position to "**secure authorization of**" a contract includes a much broader range of activities, such as recommending, deliberating or discussing, and formally or informally lobbying any public official or employee about the contract. Id.

Member of the Family

The definition of "member of a public official's family" includes, but is not limited to, these relatives of an official or employee, *regardless of where they live*:

1. Parents and step-parents;
2. Grandparents;
3. Spouse;
4. Children and step-children, whether dependent or not;
5. Grandchildren; and
6. Siblings.

Adv. Op. No. 2008-03. Any other individual related to an official or employee by blood or marriage is a "member of the official's family" if he or she lives in the same household with the official or employee. Id. For example, if a public official's cousin, uncle or aunt, niece or

nephew, or in-law lives in the same household with the official, that person is a member of the official's family.

Conflict of Interest Laws—R.C. 102.03(D) and (E)

In addition to the public contract restrictions, R.C. 102.03(D) and (E) apply to public officials or employees when their family members are seeking employment with, or are employed by, the same public agency they serve. R.C. 102.03(D) and (E) provide that:

- (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.

R.C. 102.03(D) and (E) apply to any person who is elected or appointed to, or employed by, any public agency, except teachers, instructors, and other educators who do not perform or have the authority to perform, supervisory or administrative functions. R.C. 102.01(B) and (C).¹

"Anything of value" includes money and every other thing of value. R.C. 103; 102.03(G). Employment and the compensation and benefits that accompany it are within the definition of anything of value. Adv. Op. No. 92-012.

A thing of value manifests a **"substantial and improper influence"** on a public official or employee if it could impair the official's or employee's objectivity and independence of judgment with respect to his or her public duties. Adv. Ops. No. 91-010 and 95-001.

The Commission has stated that voting on, recommending, deliberating about, discussing, lobbying, or taking any other formal or informal action within the scope of a public official's or employee's public authority is **"use of,"** or **"authorization of the use of" the authority or influence** of a public official's or employee's office or employment. Adv. Op. No. 88-005. Therefore, any such conduct related to the hire of a family member would be a violation of this section.

¹ While teachers and other educators are exempted from the conflict of interest law, they are fully subject to the public contract law (R.C. 2921.42), also discussed in this opinion.

General Nepotism Restrictions

The “nepotism” or “family hire” restrictions in R.C. 2921.42(A)(1) and 102.03(D) and (E) prohibit all public officials, regardless of their job duties or level of authority, from:

- a. Hiring any of their family members;
- b. Voting to authorize the employment of a family member; and
- c. Recommending, nominating, or using their positions in any other way to secure a job for a family member.

The Ethics Commission has held, however, that R.C. 2921.42(A)(1) and 102.03(D) and (E) do not amount to a “no-relatives” policy. Adv. Op. No. 90-010. See also *State ex rel. Halleck v. Delaware County Commissioners* (Dec. 13, 1996), Delaware App. No. 96CA-E-04-021 (holding that R.C. 124.11(B)(1) prevents local governments from implementing a broadly inclusive “no relatives” employment policy). The Ethics Law and related statutes usually do not prohibit two family members from working for the same public agency. In most cases, provided that public officials comply with nepotism restrictions, their family members can compete with others for public employment. For example, the adult daughter of a city council member could compete for a posted job in the city’s transportation department and, if she is the most qualified candidate, can be hired by city council. However, the council member is prohibited from directly hiring his or her daughter, voting to authorize his or her daughter’s employment, recommending the hire of his or her daughter, and taking any other action to secure the hire, such as discussing his or her daughter’s qualifications with the transportation director.

If a public official’s family member has been lawfully hired by the agency, without the official’s involvement in the hire, R.C. 2921.42(A)(1) and 102.03(D) and (E) prohibit the official from:

- a. Giving the family member raises, promotions, job advancements, overtime pay or assignments, favorable performance evaluations, or other things of value related to employment; and
- b. Using such official’s or employee’s public position to secure any of these employment-related benefits for a family member.

R.C. 2921.42(A)(4) prohibits a public official from having an interest in a public contract entered into by a public agency with which he or she is connected. A prohibited “interest” is a definite and direct interest, rather than an indirect interest. Adv. Op. No. 92-017. If a public official’s family member is hired by the public agency, he or she generally does not have an interest prohibited by R.C. 2921.42 in the family member’s employment contract, unless the family member is the official’s minor child. See Adv. Op. No. 93-008 (a parent has an interest in the earnings of an unemancipated minor child). Even though the official may benefit from the hire of a family member, because his or her family member’s income helps to support the household or the official is covered under the family member’s insurance, the Commission has concluded that the official does not have an “interest” in the contract. Adv. Op. No. 92-017.

However, if the official receives some thing of value, as a direct result of his or her family member's employment, the official may have an interest in the contract.

Official Required to Participate in Hiring Process

Whenever any statute, resolution, ordinance, rule, or policy requires that a particular public official participate in any part of the hiring process, the family members of that official cannot be hired by the public agency without a violation of R.C. 2921.42(A)(1).

For example, R.C. 3319.07(A) states: "In all school districts and in service centers no teacher shall be employed unless such person is nominated by the superintendent of such district or center." There is a similar requirement for the nomination of administrative officials (including assistant superintendents, principals, assistant principals, and other administrators). R.C. 3319.02(B) and (C). Because the law requires that a superintendent nominate the hire of all teachers and administrators, a superintendent's family member cannot be hired by the district or service center without a violation of R.C. 2921.42(A)(1).

Continued Employment

If a person is elected, appointed or employed in a position in an agency where a family member is already employed, the law does not prohibit the family member from continuing to work for the agency. However, a public official who is an administrator or governing board member for an agency is prohibited from using such official's public authority, in any way, to secure job-related benefits for the employee who is a family member. A public official is not prohibited from taking actions that affect all employees of the agency, including the official's family member, in the same manner. Adv. Ops. No. 92-012 and 98-003.

For example, if the adult child of a newly elected county recorder worked for the recorder's office before the parent was elected, the employee can continue in that position after the parent becomes recorder. However, the county recorder would be prohibited from promoting or giving raises to the child, and from taking any other action to secure unique or differential benefits for the child.

Union Contracts and Uniform Benefits

If a public official's family member, other than a spouse, is employed by the same public agency, the official can vote, discuss, deliberate, lobby, or otherwise participate in the ratification or rejection of a negotiated collective bargaining agreement that affects the family member in the same way as all other employees of the agency, unless the family member is an officer or employee of the union, or on the negotiating team for the union. Adv. Ops. No. 89-005 and 98-003. Public officials who are members of a governing board can also participate in the board's discussions of contract terms and negotiation strategy for a collective bargaining agreement affecting family members, although the Commission has recommended that public officials refrain from taking a more active role in the negotiation of these agreements. Adv. Op. No. 89-005. But see Adv. Op. No. 98-003 (a school district superintendent can participate in the

negotiation of a collective bargaining agreement affecting a family member (other than his or her spouse) employed by the district, provided that the family member is affected in the same manner as other similarly situated employees and is not an officer, board member, or a member of the negotiating team of the labor organization).

Because a person can be covered by his or her spouse's employer-provided health insurance, the law may apply somewhat differently to a public official whose *spouse* is employed by the same public agency. If a public official's spouse is employed by the same public agency, and the official is covered by the spouse's employment-related health insurance, the official cannot participate, in any way, in the ratification of a collective bargaining agreement covering the family member. Adv. Op. No. 92-013. If the official is not covered by his or her spouse's employment-related health insurance, the official can participate in ratification or rejection of the contract in the same manner that is discussed in the previous paragraph.

Voting to Authorize Employment—Governing Board Member

A governing board member, such as a township trustee, county commissioner, or city council member, is prohibited from voting on an ordinance, resolution, or other decision that authorizes the employment of a family member even if the board member did not participate in the hiring process. Conversely, the governing board member should not discuss or deliberate about the hire, or recommend the family member for employment, even if the board member abstains from the vote. Both of these restrictions apply to an official even if another official or employee of the agency interviewed the candidate, and has selected the family member, after a fair and open process.

A governing board member is prohibited from voting on an ordinance, resolution, or other decision to authorize the hire of a family member even if the board member's vote is not the "deciding" vote necessary to pass the ordinance or resolution.

Recommending, Reviewing Applications, or Taking Other Actions Affecting Employment

A public official is prohibited from recommending a family member for public employment, even if other officials and employees will make the final decision about whether to hire the employee. When a public official's family member has submitted an application for a public job, or is otherwise competing for the position, the official cannot review other applications, interview, rate, or rank other candidates, or take any other action in connection with the hiring activity for that position.

An official cannot recommend a family member for employment by the agency he or she serves or recommend the hire of a family member by *any other* public agency. For example, a city council member who has frequent official interactions with a township is prohibited from asking a township official or employee to hire the council member's relative.²

² Public officials are also prohibited from using their positions to secure employment for their family members from a private company or organization that is doing or seeking to do business with, regulated by, or interested in matters before the agencies they serve. Adv. Op. No. 2009-06.

Penalties

The Ethics Law and related statutes are criminal laws. If an official is convicted of violating an ethics law, the official may receive a jail sentence and/or be fined.

R.C. 2921.42(A)(1) (authorizing a family member's contract) is a fourth-degree felony with a maximum penalty of eighteen months in prison and/or a \$5000 fine. R.C. 102.03(D) and (E) (soliciting or using position to secure anything of value) are first-degree misdemeanors with maximum penalties of six months in prison and/or a \$1000 fine.

Also, R.C. 2921.42(H) provides that a contract entered into in violation of R.C. 2921.42 is void and unenforceable. Therefore, an employment contract entered into in violation of R.C. 2921.42(A)(1) would be void and unenforceable.

Conclusion

This advisory opinion 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 advised as follows: Division (A)(1) of Section 2921.42 of the Ohio Revised Code provides that no public official shall knowingly "authorize or employ the authority or influence of" the official's office to secure authorization of the employment of a family member. Divisions (D) and (E) of Section 102.03 of the Ohio Revised Code prohibit public officials and employees from using or authorizing the use of their public positions to secure employment, or employment-related benefits, for their family members. As a result, public officials and employees cannot: (a) hire or use their positions to secure employment for their family members; (b) recommend or nominate their family members for public jobs with their own, or any other, public agencies; or (c) give to their family members, or solicit or use their positions to secure for their family members, raises, promotions, job advancements, overtime pay or assignments, favorable performance evaluations, or any other things of value related to their employment.

By my signature below, I certify that Advisory Opinion No. 2010-03 was rendered by the Ohio Ethics Commission at its meeting on May 25, 2010.



Ben Rose, Chair
Ohio Ethics Commission