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INFORMATION SHEET: ADVISORY OPINION NO. 2013-01
FIRE CHIEF APPROVING PAYMENTS TO EDUCATIONAL INSTITUTIONS

What is the question in the opinion?

Can a Fire Chief, who also teaches at a college, university, or other educational institution, approve invoices for payment from the fire department to the educational institution where he teaches?

What is the answer in the opinion?

The public contract law, R.C. 2921.42(A)(1) prohibits a public official from authorizing any contract in which a business associate has an interest. If a Fire Chief works for an educational institution, it is his business associate. Because he is an employee of the educational institution, the Fire Chief cannot approve invoices for payment from the public agency to the educational institution.

What prompted this opinion?

Many Fire Chiefs and other senior fire and public safety officers teach at colleges, universities, and educational institutions. Other employees of their public agencies take classes at the educational institutions. Fire Chiefs may be in a position to approve invoices from the educational institutions for classes taken by other employees in the public agency.

When did the conclusions in this opinion become effective?

The opinion became effective when the Commission approved it at its meeting on July 10, 2013.

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IT IS NOT AN ETHICS COMMISSION ADVISORY OPINION.
ADVISORY OPINION NO. 2013-01 IS ATTACHED.**

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Advisory Opinion
Number 2013-01
July 10, 2013
**Fire Chiefs Approving
Payments to Schools**

Syllabus by the Commission:

- (1) Division (A)(1) of Section 2921.42 of the Revised Code prohibits a person employed as a Fire Chief, who is also employed as a part-time teacher at an educational institution, from authorizing, or using his or her fire department position to secure authorization of, tuition payments from the fire department to the educational institution.
- (2) A person employed as a Fire Chief, who is also employed as a part-time teacher at an educational institution, cannot sign-off on or approve payment of tuition invoices for firefighters and emergency medical personnel (“Firefighters”), and cannot assign this duty to another person who is subordinate to the Fire Chief.
- (3) By signing off on or otherwise approving tuition payments, a Fire Chief takes part in the deliberations or decision of the fire department with respect to a public contract, therefore the exception provided in Division (C) of Section 2941.42 does not apply.
- (4) The safety director, mayor, city manager, council, board of trustees, or other authority that appoints the Fire Chief can assign the duty of approving payment of tuition invoices for Firefighters to another fire department employee who is not employed at the educational institution and who is not under the control or direction of the Fire Chief who is employed at the educational institution. The person receiving such an assignment must report directly to the assigning authority on this matter.
- (5) While this advisory opinion specifically considers the application of the law to Chiefs of fire departments, the same restrictions apply to employees in any similar departments, including other senior fire or public service officers.

* * *

The Ohio Ethics Commission has been asked for an advisory opinion on behalf of Fire Chiefs, and other senior public service officers, who are employed as part-time teachers at educational institutions. The question is whether it is a violation of the public contract restrictions provided in Section 2921.42(A)(1) of the Revised Code if Fire Chiefs “sign off” on tuition invoices which authorize tuition payments to Educational Institutions for Firefighters attending classes at an educational institution at which the Fire Chiefs are employed. For the purposes of providing this opinion, the Commission assumes the following facts:

- Firefighters are required to take at least 54 hours of continuing education every three years (“Continuing Education Requirement”) in order to maintain their emergency medical service certification and more hours are required for Firefighters to move up from one level of Firefighter to another.
- Continuing education is available at chartered fire education programs and must be taught by individuals who are registered Firefighters in Ohio and who hold a fire service instructor certification issued by the Ohio Department of Public Safety.
- Beyond the Continuing Education Requirement, some Firefighters enroll in educational institutions for other education related to their employment as firefighters.
- It is a common practice for Fire Chiefs to be employed and teach Continuing Education Requirement classes at educational institutions.
- Many fire departments reimburse Firefighters for classes taken to satisfy their Continuing Education Requirement and reimburse Firefighters for education related to their profession (collectively “Classes”).
- Fire Chiefs sign off on the tuition invoices and purchase orders to authorize payment by the fiscal officer of the fire department (“Payment Authorization”) to the educational institution at which the Fire Chief is employed and teaches.
- Such Payment Authorization is made only after a full disclosure of the facts to the fire department.
- Firefighters are free to select the educational institution of their choice.
- The Fire Chief instructor is not paid a commission based on the number of students in the class.

Question Presented

Can a Fire Chief who teaches part-time at an educational institution sign off on a Payment Authorization for Firefighters in the Fire Chief’s fire department to attend Classes at the educational institution where the Fire Chief is employed?

Brief Answer

No. The Fire Chief is employed by both the fire department and the educational institution. The Fire Chief cannot approve a Payment Authorization to the educational institution that employs the Fire Chief.

The Law

Revised Code Section 2921.42,¹ commonly referred to as the Public Contract Law, makes it illegal for a public official to have an unlawful interest in a public contract. A Fire Chief employed by a fire department of a city, village, township, or other public agency is a public official subject to R.C. 2921.42.

Division (A)(1) of R.C. 2921.42 makes it illegal for a public official to 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.”² There are three elements:

- Knowingly authorizing or employing the authority or influence of his or her office to secure authorization of;
- A public contract;
- In which the public official, a member of the public official’s family, or a business associate of the public official has an interest.

As to the first element, a public official will be deemed to have “authorized” a public contract if the contract could not have been awarded without the public official’s approval.³ For example, a public official has authorized a public contract if he or she has:

1. Approved the contract;
2. Voted to approve the contract; or
3. Signed the contract.

A public official has used the “authority or influence of office” to secure the authorization of a public contract if the official has exercised the power and influence inherent in his or her public position to affect the decision-making process on a public contract, even if the official later abstains from voting on the matter, does not sign the contract, or does not otherwise participate in the final official decision.⁴ A public official has used the authority or influence of his or her office to secure authorization of a contract if the official has, for example:

1. Prepared bid specifications for a project;
2. Reviewed submitted bids and recommended which bidder should get the contract;
or
3. Signed off on payment for a particular purchase.

As to the second element of R.C. 2921.42(A)(1), “public contract” is defined in R.C. 2921.42(I)(1)(a) and includes any purchase or acquisition of property or services by or for the use of a public agency.⁵

As to the third element of R.C. 2921.42(A)(1), a public official's "business associate" is any person with whom the official is engaged in an ongoing business enterprise.⁶ Specifically, a public official's outside employer, whether public or private, is a business associate.⁷

Division (C) of R.C. 2921.42 provides an exception to these public contract restrictions if four requirements are met: (i) the supplies or services are necessary for the public agency; (ii) the supplies or services are unobtainable elsewhere for the same or lower cost; (iii) the treatment accorded the public agency is either preferential to or the same as that accorded in similar transaction; and (iv) the entire transaction is conducted at arm's length; with full knowledge of the governmental agency; and without any deliberations or decisions by the public official.

The Application of the Law to the Facts

The Fire Chief's signing off on the Payment Authorization is a necessary action before the fiscal officer can issue payment to the educational institution. The Fire Chief therefore has knowingly employed the authority of his office to secure authorization of this payment.

The Fire Chief's authorization was for a "public contract." A contract to pay an educational institution tuition for Firefighter Classes is a contract for the payment of services. Further, payment for training a fire department's employees is a "public contract," whether the payment is made directly to the educational institution that provided the training or as reimbursement to an employee who paid for the Classes.⁸

The educational institution has an interest in the public contract, because the educational institution is paid by the fire department. The educational institution is a "business associate" of the Fire Chief because the Fire Chief is employed by the educational institution.

Although the education of Firefighters is a necessary service to the fire department and there is full disclosure by the Fire Chief of his employment with the educational institution, the exception provided in R.C. 2921.42(C) does not apply. The Firefighter training is available elsewhere at comparable cost, and the transaction is not at arm's length, because the Fire Chief did "take part in the deliberations or decision" of the Department "with respect to the public contract." Furthermore, a Fire Chief's signing of a Payment Authorization is not a procedural or de minimis act, because, but for that act, the educational institution would not be paid.

Alternative Solution

The Fire Chief is prohibited from signing off on or otherwise approving tuition payments from the Department he serves to the educational institution where he teaches, but the law does not prohibit:

1. Employees of the fire department from taking Classes at the educational institution where the Fire Chief teaches; or
2. The Fire Chief from accepting employment from and teaching at the educational institution; or

3. The appointing authority from assigning someone else to sign off on the Payment Authorization from the Department to the educational institution, provided that the assigned person does not report to the Fire Chief on these matters and does not work for the educational institution.

Example

The Fire Chief of a statutory village is appointed by the village mayor.⁹ The Fire Chief is also employed by a state community college to teach fire science Classes. Village Firefighters need fire training and take Classes at the college. The college provides the training and sends invoices to the village fiscal officer who seeks approval before paying the college for the Classes the Firefighters attend.

The village mayor can assign the duty of approving the invoices to another village employee (even another employee of the fire department), so long as the assigned employee does not report to the Fire Chief as to this function, and the assigned employee is not also employed by the educational institution. The employee must report directly to the mayor, rather than the Fire Chief, regarding the approval of the invoices. As a result, the village Firefighters receive the training; the Fire Chief continues to serve the village as Chief and be employed to teach the Classes; and the educational institution receives payment for the Classes taught.

Conclusion

Limited to questions arising under Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code, it is the opinion of the Ohio Ethics Commission, and the Commission advises that: Division (A)(1) of Section 2921.42 of the Revised Code prohibits a Fire Chief, who teaches part-time at an educational institution, from taking any action as a Fire Chief, to authorize or use the Fire Chief's position to secure authorization of tuition payments from the fire department to the educational institution employing the Fire Chief. The Fire Chief cannot sign-off on or otherwise approve payment of the tuition invoices, and cannot assign this duty to another person who is subordinate to the Fire Chief. The safety director, mayor, council, board of trustees, or other authority that appoints the Fire Chief can assign the duty of approving payment of tuition invoices to another department employee who is not employed by the educational institution and who must report to the assigning authority, rather than the Fire Chief, on these matters. Finally, the goals of all the participants can be accomplished without violation of the law.

Merom Brachman

Merom Brachman, Chairman
Ohio Ethics Commission

The Ohio Ethics Commission Advisory Opinions referenced in this opinion are available on the Commission's Web site: www.ethics.ohio.gov.

¹ [R.C. 2921.01\(A\)](#); Ohio Ethics Commission Advisory Opinion [No. 84-014](#).

² [R.C. 2921.42\(A\)\(1\)](#).

³ Adv. Ops. No. [87-004](#), [88-008](#), [90-010](#), and [92-012](#).

⁴ Adv. Op. No. [90-012](#) and [91-001](#).

⁵ [R.C. 2921.01\(D\)\(1\)\(a\)](#).

⁶ Adv. Ops. No. [89-008](#) and [96-004](#).

⁷ Adv. Ops. No. [86-002](#) and [2007-01](#).

⁸ *Id.*

⁹ [R.C. 737.22](#).