



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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Advisory Opinion Number 88-007
September 1, 1988

Syllabus by the Commission:

(1) Division (A)(1) of Section 2921.42 of the Revised Code prohibits a member of a board of education from authorizing, voting, deliberating, participating in discussions, or otherwise using her authority or influence, formally or informally, to secure authorization, modification, or renewal of a contract between the board of education and her spouse's law firm;

(2) Division (A)(4) of Section 2921.42 of the Revised Code does not prohibit a person from serving as a member of a board of education, where her spouse is a partner in a law firm which has entered into a contract with the board of education, unless the person would derive some direct interest or benefit from the board's employment of her spouse's law firm.

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You have asked whether the Ohio Ethics Law and related statutes would prohibit an individual from serving as a member of a board of education if her spouse is a partner in a law firm which has been hired as legal counsel to the board of education. You have stated, by way of history, that the individual's spouse is not a member of the firm's "schools division" and is not involved, directly or indirectly, in giving legal advice or participating in litigation with regard to school issues.

Division (A)(1) of Section 2921.42 of the Revised Code reads as follows:

(A) No public official shall knowingly do any of the following:

(1) Authorize, or employ the authority or influence of his office to secure authorization of any public contract in which he, a member of his family, or any of his business associates has an interest.

The term "public official" is defined in R.C. 2921.01(A) for purposes of R.C. 2921.42 to include any elected or appointed officer of any political subdivision. Therefore, a member of a board of education is subject to the prohibitions of R.C. 2921.4.2. See Ohio Ethics Commission Advisory Opinions No. 80-003 and 82-003.

The term "Public contract" is defined for purposes of R.C. 2921.42 in Division (E) of that section to include the purchase or acquisition, or a contract for the purchase or acquisition, of

property or services by or for the use of a political subdivision. A contract between the board of education and a law firm for the law firm's services falls within the definition of a "public contract" under R.C. 2921.42. See Advisory Opinion No. 86-004.

Division (A)(1) of Section 2921.42 prohibits a member of a board of education from authorizing, or using her authority or influence to secure authorization of, a public contract in which a member of her family has an interest. A family member includes a spouse under R.C. 2921.42. See Advisory Opinions No. 80-001 and 85-015. An "interest" which is prohibited under R.C. 2921.42 must be definite and direct, and may be either pecuniary or fiduciary in nature. See Advisory Opinion No. 81-008.

You have indicated that the board member's spouse is a partner in the law firm which has contracted with the board. As a partner, the spouse receives a distributive share of the firm's earnings, and would be entitled to a percentage of the moneys paid by the board of education to the law firm for its services, regardless of whether he personally performed any work for the board. The board member's spouse would, therefore, have a definite and direct, pecuniary interest in the public contract between the board and his law firm. Division (A)(1) of Section 2921.42 would prohibit the member of the board of education from authorizing, voting, deliberating, participating in discussions, or otherwise using her authority or influence as a member of the board, either formally or informally, to secure authorization, including modification or renewal, of a contract between the board and her spouse's law firm. See Advisory Opinions No. 82-003 and 86-004.

Division (A)(4) of Section 2921.42 reads as follows:

(A) No public official shall knowingly do any of the following: . . .

(4) Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which he is connected.

As noted above, an "interest" which is prohibited under R.C. 2921.42 must be definite and direct in nature. Even though a public official may have an indirect interest in a contract from which her spouse will ' profit or benefit, a public official is not generally considered to have a direct interest in a contract with her political subdivision merely because her spouse has an interest in such contract, absent additional facts indicating otherwise. See Advisory Opinion No. 85-003. Division (A)(4) does not per se prohibit the spouse of a board member from having an interest in a contract entered into by the board. However, if the facts indicate that the board member would derive a direct, pecuniary or fiduciary benefit as a result of her spouse's interest in a contract with the board, then R.C. 2921.42(A)(4) would prohibit the spouse from having an interest in the contract with the board. See, e.g., Advisory Opinion No. 85-003 (concluding that R.C. 2921.42(A)(4) would prohibit the spouse of the county engineer from being employed by the county where the county engineer, as a result of his spouse's employment, would receive health insurance coverage that is not otherwise available to him as county engineer). See also R.C. 2921.42(A)(3) (a public official may not profit from the prosecution of a public contract authorized by him or by a board of which he was a member at the time of authorization, and not

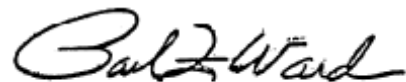
let by competitive bidding or let by competitive bidding in which his is not the lowest and best bid).

Therefore, Division (A)(4) of Section 292 1.42 would not, per se prohibit a person from serving as a member of a board of education where her spouse is a partner in a law firm which provides legal services to the board, unless the board member would derive some direct interest or benefit from the board's employment of her spouse's law firm. R.C. 2921.42(A)(1) would, however, prohibit the board member from voting, discussing, or otherwise using her official authority or influence, to secure authorization, renewal, or modification of a contract between the board and her spouse's law firm.

Although a public official is not generally deemed to have a definite and direct pecuniary interest in a public contract with the political subdivision which she serves for purposes of R.C. 2921.42, merely because her spouse has an interest in a contract with the political subdivision, school board members are also subject to R.C. 3313.33. This section prohibits a member of a board of education from having a direct or indirect pecuniary interest in any contract of the board. The Ethics Commission does not render advisory opinions with respect to R.C. 3313.33, and you may wish to contact the board of education's legal counsel concerning interpretation of this provision, since a school board member may be considered to have an indirect interest in a contract with the board where her spouse has an interest in a contract entered into by the board.

This advisory opinion is based on the facts presented, and 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, (1) Division (A)(1) of Section 2921.42 of the Revised Code prohibits a member of a board of education from authorizing, voting, deliberating, participating in discussions, or otherwise using her authority or influence, formally or informally, to secure authorization, modification, or renewal of a contract between the board of education and her spouse's law firm; and (2) Division (A)(4) of Section 2921.42 of the Revised Code does not prohibit a person from serving as a member of a board of education, where her spouse is a partner in a law firm which has entered into a contract with the board of education, unless the person would derive some direct interest or benefit from the board's employment of her spouse's law firm.



Paul F. Ward, Chairman
Ohio Ethics Commission