



**OHIO ETHICS COMMISSION**

THE ATLAS BUILDING  
8 EAST LONG STREET, SUITE 1200  
COLUMBUS, OHIO 43215-2940  
(614) 466-7090

Advisory Opinion Number 89-005  
May 11, 1989

Syllabus by the Commission:

- (1) A member of a school district board of education whose spouse is employed by the school district is not prohibited by the Ohio Ethics Law and related statutes from voting to accept or reject a proposed collective bargaining agreement between the school district and the employees' labor organization, unless his spouse is an officer, board member, or member of the negotiating team or committee of the employee organization;
- (2) A member of a school district board of education who is a teacher in another school district and a member of an employee labor organization by virtue of that employment is not prohibited by the Ohio Ethics Law and related statutes from participating in discussions or voting on a proposed collective bargaining agreement between the employee organization and the school district of which he is a board member.

\* \* \* \* \*

You have asked whether the Ohio Ethics Law and related statutes prohibit a member of a board of education, whose spouse is employed as a teacher by the school district, from negotiating a contract with the employee organization representing the bargaining unit of which his spouse is a member. You have also asked whether a member of a board of education who is employed as a teacher in another school district and who is a member of the teachers' employee organization is prohibited from negotiating a contract with that organization in his capacity as a member of the board of education.

Division (A)(1) of Section 2921.42 of the Revised Code provides 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 for purposes of R.C. 2921.42 to include any elected or appointed officer, employee, or agent of the state or any political subdivision thereof. A member of a board of education is a public official for purposes of R.C. 2921.42 and is subject to its statutory prohibitions. See Ohio Ethics Commission Advisory Opinions No. 78-006, 80-003, 82-003, 85-009, 87-008, and 88-007.

R.C. 2921.42(E)(1) defines a "public contract" for purposes 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. The Ohio Ethics Commission has consistently held that an employment relationship between a political subdivision and an employee is a "public contract" for purposes of R.C. 2921.42 since the political subdivision is purchasing or acquiring services of the employee. See Advisory Opinions No. 85-003, 85-015, and 86-010. Therefore, an individual's contract of employment with the school district is a public contract for purposes of R.C. 2921.42.

The Ethics Commission has concluded, accordingly, that a public official is prohibited by R.C. 2921.42(A)(1) from authorizing or using the authority or influence of his office to secure authorization of the employment of any member of his family by the political subdivision with which he serves. See Advisory Opinions No. 85-015 and 86-010. A family member includes spouse, children, whether dependent or not, parents, grandparents, grandchildren, siblings, and other persons related by blood or marriage and residing in the same household. See Advisory Opinions No. 80-001 and 81-004.

In Advisory Opinion No. 82-003, the Commission held that a master labor contract between a board of education and a teachers' union establishing a general salary schedule and the general terms and conditions of employment for all teachers is also a public contract for purposes of R.C. 2921.42. The Commission concluded, however, that an individual teacher's interest in the master labor contract is not sufficiently definite and direct so as to invoke the prohibitions of R.C. 2921.42(A)(1), and that a school board member whose spouse is a teacher and member of the teachers' union is not prohibited from ratifying the final master contract between the school district and the teachers' union. Advisory Opinion No. 82-003 does note, however, that a teacher who is an officer, board member, or member of the negotiating team or committee of the teachers' union would have a sufficiently direct and personal interest in the master contract to invoke the prohibitions of R.C. 2921.42, so that the teacher's spouse who served as a school board member would be prohibited by R.C. 2921.42(A)(1) from voting on the master contract. Advisory Opinion No. 82-003 also emphasizes that R.C. 2921.42(A)(1) prohibits a board of education member from authorizing, voting, or otherwise using the authority or influence of his office to secure approval of an individual contract of employment for a member of his family.

In response to your first question, therefore, a member of a board of education whose spouse is employed by the school district is not prohibited by R.C. 2921.42(A)(1) from voting to accept or reject a proposed collective bargaining agreement between the school district and the employees' labor organization, unless his spouse is an officer, board member, or member of the negotiating team or committee of the labor organization. You have specifically asked whether a board member whose spouse is a teacher may "negotiate" a contract with the teachers' labor organization. Pursuant to Division (C) of Section 4117.10 of the Revised Code, the "designated representative" of a board of education "is responsible for negotiations in the collective bargaining process." The board of education must then accept or reject the proposed collective bargaining agreement reached between the board's representative and the employee organization.

See R.C. 4117.10(B) and (C). Although a member of the board of education whose spouse is a teacher in the school district is not generally prohibited from voting to ratify a collective bargaining agreement, he should refrain from taking a more active role in serving as the board's representative in negotiations with the employee organization, since such an active role may create the appearance of impropriety. See generally Advisory Opinion No. 85-002. See also R.C. 4117.20 (prohibiting a person who has an interest in the outcome of bargaining which

is in conflict with the public employer's interest from participating on behalf of the public employer in the collective bargaining process, except that the person may vote on ratification of the agreement); R.C. 4117.21 (exempting collective bargaining meetings between public employers and employee organizations from R.C. 121.22, Ohio's "Sunshine" or "Open Meeting" Law).

Your second question is whether a member of a board of education who is a teacher in another school district and a member of the employee labor organization by virtue of that employment is prohibited from negotiating a collective bargaining agreement with the same employee organization in his capacity as a board of education member. As set forth above, R.C. 2921.42(A)(1) prohibits a public official from authorizing or using the authority or influence of his office to secure authorization of a public contract in which he, a member of his family, or any of his business associates has an interest. Furthermore, Division (A)(4) of Section 2921.42 prohibits a public official from having an interest in a public contract entered into by or for the use of the political subdivision with which he is connected. It must first be determined whether a board of education member who is a member of an employee organization by virtue of his employment in another school district would have an "interest" in the collective bargaining agreement entered into by the employee organization and board of education for purposes of R.C. 2921.42.

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. As noted above, Advisory Opinion No. 82-003 held that an individual teacher's interest in a master union contract is not sufficiently definite and direct to invoke the prohibitions of R.C. 2921.42 unless he is an officer, board member, or member of the negotiating team or committee of the teachers' union. In this instance, the board member's personal interest is even less direct since the collective bargaining agreement is not with his employing school district. It is clear, therefore, that the board of education member would have no direct interest in the contract between the board and the employee organization unless he is an officer or board member of the employee organization or a member of the organization's negotiating team.

Division (A)(1), however, further prohibits a public official from participating in the consideration or vote upon a public contract in which any of his business associates has an interest. Therefore, it must be determined whether an employee organization is the "business associate" of one of its members.

The term "business associate" is not statutorily defined for purposes of R.C. 2921.42(A)(1). In Advisory Opinion No. 85-004, the Commission defined "associate," relying on judicially developed definitions, to mean: "to connect closely or join with others in a common purpose, activity, or responsibility, to partake or share in a common design" or "to join often, in a loose relationship as a partner, fellow worker, colleague, friend, companion, or ally." Advisory Opinion No. 85-004 went on to explain, however, that for purposes of Division (A)(1), a relationship must be for business purposes. In Advisory Opinion No. 86-002, the Commission explained that business associates act together to pursue a common business purpose or conduct a common business enterprise.

There is no question but that a member of an employee organization and the organization are connected or joined in a relationship for a common purpose or activity. However, the

question arises whether the relationship is for a "business" purpose. It is a well-established principle of statutory construction that in the absence of a statutory definition or technical meaning, words and phrases used in a statute must be construed according to common usage. See R.C. 1.42. Webster's New World Dictionary 192 (2d college ed. 1972) defines "business" as "one's work, occupation, or profession . . . the buying and selling of commodities and services; commerce; trade." Black's Law Dictionary 748-49 (4th ed. 1968) states that: "the term 'business' has no definite or legal meaning," but labor and business are not synonyms. It is apparent that the relationship between an employee organization and a member of the organization cannot fairly be described as one of "business associates." Division (A)(1), therefore, would not prohibit a member of a board of education who is a member of an employee organization by virtue of his employment in another school district, from authorizing a collective bargaining agreement between the employee organization and the board of education of which he is a member, unless he (or a member of his family) has an "interest" in the contract as an officer or board member of the organization, or as a member of the negotiating team.

A member of a board of education is, however, also subject to the restrictions of Division (D) of Section 102.03 of the Revised Code, which prohibits a public official or employee from using the authority or influence of his office or employment to secure anything of value that is of such character as to manifest a substantial and improper influence upon him with respect to his official duties. See Generally R.C. 102.01(B) and (C); Advisory Opinion No. 80-003. Prior to the enactment of Am. Sub. H.B. 300, 116th Gen. A. (eff. Sept. 17, 1986), R.C. 102.03(D) prohibited a public official or employee from using his authority or influence to secure anything of value ' for himself if the thing of value were of such character as to manifest a substantial and improper influence upon him with respect to his duties. Am. Sub. H.B. 300 amended R.C. 102.03(D) to delete the requirement that the thing of value be for the public official or employee himself, thus broadening the scope of the prohibition of R.C. 102.03(D). See Advisory Opinions No. 87-004 and 88-004. However, R.C. 102.03(D) still requires that the thing of value, whether it is secured for the official or for someone else, be of such a character as to manifest a substantial and improper influence upon the official with respect to his duties.

A determination as to whether a public official is prohibited from participating in a matter will depend on the relationship between the official and the party whose interests would be affected in that matter. See Advisory Opinion No. 88-004. The Ethics Commission has held that the standard in judging such participation is whether the relationship between the public official and the party is such that the public officials objectivity or independence of judgment could be impaired with regard to the matter affecting the party's interests. Id.

Division (D) of Section 102.03 would prohibit a public official or employee who is a member of an organization from participating in deliberations, voting, or otherwise using his official position with regard to the interests of the organization, where: (1) he is an officer, board member, or employee of the organization; (2) he has assumed a particular responsibility in the organization with regard to that subject matter; (3) the matter would affect his personal, pecuniary interests; or (4) the facts otherwise indicate that membership in the organization could impair the officials objectivity or independence of judgment. See Advisory Opinions No. 85-006, 85-012, 86-007, and 88-005. As a general matter, however, mere membership in an organization would not create such a conflict of interest that a public official would be prohibited from participating in matters affecting the interests of the organization.

In this instance, it is assumed that the board of education member is not an officer or board member of the employee organization and does not take an active role in the organization as a negotiator or otherwise. Further, the pecuniary interests of the individual as a teacher in another school district would not be affected by the collective bargaining agreement between the board of education and the employee organization. R.C. 102.03(D) would not, therefore, prohibit the board member from participating in deliberations or voting upon the school board's collective bargaining agreement with the employee organization.


In the area of public sector labor relations, however, it is instructive to examine Section 4117.20(A) of the Revised Code, which reads:

No person who is a member of the same local, state, national, or international organization as the employee organization with which the public employer is bargaining or who has an interest in the outcome of the bargaining, which interest is in conflict with the interest of the public employer, shall participate on behalf of the public employer in the collective bargaining process except that the person may, where entitled, vote on the ratification of an agreement.

The Ethics Commission has no authority to interpret R.C. 4117.20, and you may wish to contact the State Employment Relations Board for guidance as to whether this provision would prohibit the board member from participating in the collective bargaining process (except as to ratification) with an employee organization of which he is a member.

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, that: (1) A member of a school district board of education whose spouse is employed by the school district is not prohibited by the Ohio Ethics Law and related statutes from voting to accept or reject a proposed collective bargaining agreement between the school district and the employees' labor organization, unless his spouse is an officer, board member, or member of the negotiating team or committee of the employee organization; and (2) A member of a school district board of education who is a teacher in another school district and a member of an employee labor organization by virtue of that employment is not prohibited by the Ohio Ethics Law and related statutes from participating in discussions or voting on a proposed collective bargaining agreement between the employee organization and the school district of which he is a board member.

  
Richard D. Jackson, Chairman  
Ohio Ethics Commission