



OHIO ETHICS COMMISSION

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Advisory Opinion Number 92-017
November 20, 1992

Syllabus by the Commission:

(1) This advisory opinion expressly overrules the holding of Advisory Opinion No. 85-003 that a public official who is covered by health insurance received by his spouse as an employee of the official's political subdivision has a prohibited interest in his spouse's contract of employment with his political subdivision for purposes of Division (A)(4) of Section 2921.42 of the Revised Code. The holding of Advisory Opinion No. 85-003 that Division (A)(1) of Section 2921.42 of the Revised Code prohibits a public official from authorizing or otherwise using the authority or influence of his office to secure approval of a contract of employment for his spouse with the official's political subdivision is not overruled and is expressly affirmed;

(2) The Ohio Ethics Law and related statutes do not prohibit a member of a city school district board of education whose spouse is employed in the same school district from being covered by health insurance received by his spouse as an employee of the board member's school district pursuant to a collective bargaining agreement;

(3) Division (D) of Section 102.03 of the Revised Code prohibits a member of a city school district board of education, who is covered by health insurance which his spouse receives as an employee in the same school district pursuant to a collective bargaining agreement, from voting, discussing, deliberating, recommending, or otherwise using his authority or influence as a board member to authorize the collective bargaining agreement; however, the school board member is not prohibited from participating in the board of education's procurement of health insurance coverage from a firm that will provide group insurance benefits to all eligible school district employees and personnel.

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You have asked whether the Ohio Ethics Law and related statutes prohibit a member of a city school district board of education (school board member), whose spouse is employed as a teacher in the same school district, from being covered by health insurance coverage which his spouse receives as an employee of the school district under a collective bargaining agreement entered into between the board of education and an employee labor organization. You have asked that this question be addressed in light of the provisions of R.C. 3313.202 (D) which grants an elected board of education member the option to purchase health insurance benefits and other benefits for himself and his dependent children and spouse under any of the benefit plans available to employees of the school district. If the answer to your first question is that the board member may be covered, you also ask whether the school board member is prohibited from

deliberating and voting on matters pertaining to a collective bargaining agreement that will provide group insurance benefits to all school district employees, including his spouse, where he would be covered under his spouse's insurance.

The Ethics Commission's statutory jurisdiction is limited to Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code. See R.C. 102.06 and 102.08. Your questions also raise the issue of the application of other statutes which are outside the Ethics Commission's advisory jurisdiction.

R.C. 3313.33 prohibits a school board member from having either a "direct or indirect" pecuniary interest in a contract of the board of education with which he serves. For example, in Ohio Op. Att'y Gen. No. 89-030, the Attorney General held that a school board member has a pecuniary interest in a contract with his school district and R.C. 3313.33 is violated if a school board member's spouse who is a partner in a law firm which has been hired as legal counsel to the board of education uses a share of her earnings from the contract to meet her marital obligation to support her spouse. The school district's legal advisor is the appropriate person to determine whether R.C. 3313.33 is violated if the school board member is included on the health insurance coverage which his spouse receives as an employee of the school district. Cf. Ohio Ethics Commission Advisory Opinion No. 88-007 (R.C. 2921.42 (A)(4) does not 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 unless the individual would derive a direct interest or benefit from the board's employment of her spouse's law firm). See also R.C. 2921.42 (A)(4) (described below.)

Also, R.C. 4117.20 (A) of the Public Employee's Collective Bargaining Law prohibits 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. 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 on this issue. See Advisory Opinion No. 89-005.

The issue whether the statutes under the jurisdiction of the Ohio Ethics Commission prohibit the school board member from being covered under group insurance coverage that his spouse receives as an employee of the school district under a collective bargaining agreement will now be addressed.

You state that the insurance coverage available to school district employees under the collective bargaining agreement provides for "family plan" coverage which enables an employee to include any number of family members on her plan under one premium, paid in part by the school district and in part by the employee. You also state that once the family plan is chosen, the inclusion of additional family members results in no additional cost to either the school district or the employee.

R.C. 2921.42 (A)(4) provides that no public official shall knowingly:

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.

The term "public official" is defined in R.C. 2921.01 (A) for purposes of R.C. 2921.42 to include any elected officer of any political subdivision of the state. A member of a school district board of education is a public official for purposes of R.C. Section 2921.42 and is subject to its statutory prohibitions. See Advisory Opinions No. 78-006, 80-003, 82-003, 85-009, 87-008, 88-007, 89-005, and 90-003.

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. Division (A)(4) of Section 2921.42 of the Revised Code prohibits a public official from having a definite and direct pecuniary or fiduciary interest in a public contract with his own political subdivision. See Advisory Opinions No. 81-008, 82-003, 85-003, 88-007, 90-003, and 90-005.

The term "public contract" is defined in R.C. 2921.42 (E)(1) 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 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 the employee's services. See Advisory Opinions No. 82-003, 85-003, 85-015, 86-010, 87-008, 89-005, 90-010, 91-002, and 92-003. A board of education authorizes an individual teacher's employment with the district and enters into a written contract of employment with the teacher. See R.C. 3319.07 and 3319.08, respectively. Accordingly, in the instant situation, the spouse's individual contract of employment with the school district is a public contract for purposes of R.C. 2921.42.

Also, a "public contract" includes a collective bargaining agreement entered into between a board of education and a labor organization covering employees of the school district. See Advisory Opinions No. 82-003 and 89-005. Generally, a collective bargaining agreement establishes a schedule of compensation and benefits and the terms and conditions of employment for employees of the school district who are covered by the agreement. Id. See also R.C. 4117.01 (G). Therefore, the collective bargaining agreement to which the school board member's spouse is subject and under which she receives health insurance benefits is a public contract for purposes of R.C. 2921.42.

Furthermore, a "public contract" includes the procurement of health insurance coverage by a political subdivision for its employees. See Advisory Opinion No. 88-008. Division (A) of Section 3313.202 of the Revised Code authorizes the board of education of a school district to "procure and pay all or part of the cost of" various health insurance benefits and other benefits, covering employees of the school district and the dependent children and spouse of such employees. Therefore, the school board's procurement of health insurance coverage for its employees is a public contract for purposes of R.C. 2921.42.

Division (A)(4) of Section 2921.42 of the Revised Code prohibits a board of education member from having a definite and direct, pecuniary or fiduciary, interest in a public contract with his own school district or board of education. See Advisory Opinions No. 81-008, 82-003, 85-003, 88-007, 90-003, and 90-05. As noted above, an "interest" which is prohibited under R.C. 2921.42 must be definite and direct.

The Ethics Commission has consistently held that a spouse is independent with the power to contract in her own right and that a public official is not generally considered to have a definite and direct interest in a contract with his political subdivision merely because his spouse has an interest in such contract, absent facts indicating otherwise. See Advisory Opinions No. 85-003, 88-007, and 89-005. Although a school board member who is covered by insurance his spouse receives as an employee of the school district may benefit from his spouse's employment, and may be deemed to have a definite interest in his spouse's employment with the school board, the school board member's interest is not direct in nature. See Advisory Opinion No. 92-013. Therefore, a school board member is not deemed to have an "interest" in his spouse's individual contract of public employment for purposes of R.C. 2921.42 (A)(4) where he would be covered by health insurance his spouse receives as an employee of the school district. See Advisory Opinions No. 82-003, 89-005, and 92-013. See also Advisory Opinion No. 88-007. But see R.C. 3313.33; Ohio Att'y Gen Op. No. 89-030 (described above) .

Having determined that a school board member is not deemed to have an interest in his spouse's individual contract with the school district, the issue becomes whether a school board member would have a definite and direct interest in a collective bargaining agreement with the school district if he were to be covered by health insurance coverage which his spouse receives as an employee of the school district pursuant to the collective bargaining agreement. In order to address this issue it is helpful to first examine the nature of the interest of the **school board member's spouse** in the benefits which she receives pursuant to a collective bargaining agreement.

The Commission has held that an individual employee who is a member of a labor organization and covered by a collective bargaining agreement does not have a sufficiently definite and direct interest in the collective bargaining agreement, so as to invoke R.C. 2921.42 (A)(1) prohibiting a school board member from authorizing a public contract in which his spouse has an interest, unless the employee is an officer, board member, or member of the negotiating team of the labor organization. See Advisory Opinions No. 82-003, 89-005, 89-008, and 92-012. An officer, board member, or member of the labor organization's negotiating team would have a fiduciary interest in the agreement. See Advisory Opinion No. 82-003. See also Advisory Opinion No. 81-008.

Therefore, in the instant situation, the school board member's spouse would not, as an employee, have a definite and direct pecuniary or fiduciary interest in the collective bargaining agreement. Since the school board member's spouse does not have an interest in the collective bargaining agreement, the school board member would also not have an interest in the agreement, even if he were covered by his spouse's insurance policy. The school board member's interest in the collective bargaining agreement is even more indefinite and indirect than his spouse's interest, and since the employee-spouse is not generally considered to have an interest in

the collective bargaining agreement, it can hardly be said that the school board member would have an interest.

If the school board member's spouse is an officer, board member, or member of the negotiating team of the labor organization, then she would have a fiduciary interest, but not a pecuniary interest, in the collective bargaining agreement. However, since a public official is not generally considered to have an interest in a public contract merely because his spouse has an interest in such a contract, if a teacher has a fiduciary interest in the collective bargaining agreement under which she receives insurance benefits, members of her family who are included on her "family plan" coverage, including her spouse, would not have a corresponding fiduciary interest in the collective bargaining agreement, nor would they have any independent definite and direct pecuniary interest. Therefore, a school board member who is covered by his spouse's policy would not have a definite and direct interest in the collective bargaining agreement, even if his spouse is an officer, board member, or member of the negotiating team of the labor organization.

In Advisory Opinion No. 85-003 the Ethics Commission addressed the issue whether the spouse of a county engineer could be employed by the same county if the county engineer no took part in the decision authorizing his spouse's employment. See R.C. 2921.42 (A)(1) (described below) (a public official is prohibited from authorizing a public contract in which a member of his family has an interest.) The Commission held in Advisory Opinion No. 85-003:

[A]s a result of his spouse's employment, the county engineer would receive health insurance coverage that is not otherwise available to him as county engineer. Thus, the county engineer would derive a direct, pecuniary benefit as a result of his spouse's employment with the county, which would constitute an "interest" in the [spouse's] employment contract . . . therefore, . . . Division (A)(4) of Section 2921.42 of the Revised Code would prohibit the spouse of the county engineer from being employed by the county. (Emphasis added.)

Advisory Opinion No. 85-003 did not state whether the spouse of the county engineer would have been employed pursuant to a collective bargaining agreement; however, the holding of the opinion indicates that a public official who is covered by health insurance which his spouse receives as an employee of the political subdivision under a collective bargaining agreement would be deemed to have a definite and direct pecuniary interest in the public contract, even though his spouse, as explained above, would not. Thus, it is readily apparent that the holding of Advisory Opinion No. 85-003 that a public official has a definite and direct pecuniary interest in a public contract with his own political subdivision by receiving health insurance coverage from his spouse's employment cannot be reconciled with Advisory Opinion No. 82-003 and subsequent opinions which indicate that a teacher, including one who is an officer, board member, or member of the negotiating team of the labor organization, does not have a definite and direct pecuniary interest in the collective bargaining agreement under which she receives insurance benefits. See Advisory Opinion No. 89-005. See also Advisory Opinion No. 92-012. Accordingly, Advisory Opinion No. 85-003 is hereby overruled to the extent that it is inconsistent with the holding of this opinion.

Therefore, a school board member who receives insurance coverage through his spouse's family plan does not have a definite and direct interest in a collective bargaining agreement which provides the health insurance to his spouse even if the board member's spouse serves the labor organization as an officer, board member, or member of the negotiating team. See also Advisory Opinion No. 92-012 (a city employee who is not covered by a collective bargaining agreement does not have a definite and direct interest in compensation established by an ordinance of city council which uniformly affects the compensation of all city employees who are not covered by collective bargaining).

Having determined that a school board member who receives insurance coverage through his spouse's family plan does not have an interest in either his spouse's individual contract of public employment or the collective bargaining agreement entered into between the board of education and the employee labor organization, the issue remains whether the school board member has an interest in the board's procurement of health insurance coverage.

As explained above, the school board's procurement of health insurance coverage from a firm for its employees pursuant to R.C. 3313.202 (A) is a public contract for purposes of R.C. 2921.42 (E)(1). See Advisory Opinion No. 88-008. The issue thus becomes whether a public official who will benefit from such insurance coverage by being included on his spouse's family plan coverage has a definite and direct interest in the profits or benefits of this public contract for purposes of R.C. 2921.42.

The firm and its agents who receive consideration from a political subdivision in exchange for providing goods or services are deemed to have a definite and direct interest in a public contract. See Advisory Opinions No. 79-005, 80-001, and 92-006. Accordingly, R.C. 2921.42 imposes restrictions upon a public official who wishes to sell goods or services to his own political subdivision. See Advisory Opinions No. 88-008 and 90-003. You have provided no facts indicating that, in this instance, the school board member whose spouse is employed by the school district either owns or has a financial or fiduciary interest in the firm which is providing the insurance coverage.

In Advisory Opinion No. 92-013, the Ethics Commission explained that even though a transaction may fall within the definition of a public contract for purposes of R.C. 2921.42 (E), the prohibitions of R.C. 2921.42 will not necessarily apply to a public official who may ultimately receive some benefit from the transaction unless the public official has a definite and direct interest in the public contract. In this instance, the school board member is not receiving consideration from the school district for the procurement of insurance services and is not providing any service under the contract between the school district and insurance provider or performing work under this contract. Therefore, in the instant situation, a school board member who receives health insurance coverage under his spouse's family plan which his spouse receives pursuant to a collective bargaining agreement does not have the same level of interest in the school district's purchase of insurance benefits from a firm in which he has no pecuniary or fiduciary interest as he would if a firm in which he had an ownership or other financial interest, or a fiduciary interest, were awarded the contract for insurance services. See Advisory Opinion No. 88-008. Cf. Advisory Opinion No. 92-013 (a property owner who benefits from an infrastructure improvement made by or for the use of his political subdivision as part of a

neighborhood revitalization program, but who does not have a financial or fiduciary interest in the firm that is making the public improvements does not have a definite and direct interest in the public improvements). Accordingly, a school board member who receives health insurance coverage under his spouse's family plan does not have a definite and direct interest for purposes of R.C. 2921.42 in the public contract between the school district and the firm which provides the insurance coverage.

In sum, a member of a school district board of education whose spouse is employed by the same school district does not have an interest in: (1) his spouse's individual contract of employment with the school district; (2) the collective bargaining agreement entered into between the board of education and the labor organization covering employees of the school district; or (3) the board of education's procurement from a firm of health insurance coverage for its employees. Therefore, R.C. 2921.42 (A)(4) does not prohibit a member of a city school district board of education whose spouse is employed as a teacher in the same school district from being covered by health insurance which his spouse receives pursuant to a collective bargaining agreement.

Your attention is also directed to Division (A)(3) of Section 2921.42 which provides that no public official shall knowingly:

During his term of office or within one year thereafter, occupy any position of profit in the prosecution of a public contract authorized by him or by a legislative body, commission, or 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.

R.C. 2921.42 (A)(3) prohibits a public official, during his term of office and for one year thereafter, from profiting from a contract which was authorized by his board, unless the contract was competitively bid and the contract from which he would profit was the lowest and best bid. A public contract is considered to have been "authorized" by an official or board if the contract could not have been awarded without the approval of the official or his board. See Advisory Opinions No. 87-004 and 88-008. A public official who is a member of a board is subject to the prohibition of R.C. 2921.42 (A)(3) even if he does not deliberate, participate in the discussions, vote upon, or otherwise approve the contract. See Advisory Opinions No. 87-008 and 88-008.

R.C. 2921.42 (A)(3) does not speak in terms of a public official's "interest" in a public contract, but rather prohibits a public official from "occupy[ing] any position of profit in the prosecution of a public contract," under specific circumstances. See Advisory Opinions No. 92-008 and 92-013. The Ethics Commission has held that while an "interest" in a public contract for purposes of R.C. 2921.42 (A)(1) and (A)(4) may be either pecuniary or fiduciary in nature, the term "profit" as used in R.C. 2921.42 (A)(3) connotes only a pecuniary or financial gain or benefit. See Advisory Opinion No. 92-013.

However, in Advisory Opinion No. 92-013, the Ethics Commission held:

[I]t logically follows that if a public official's interest in the profits and benefits of a public contract must be "definite and direct" for purposes of Division (A)(4), then the position of profit which the public official occupies in the prosecution of the public contract must also be definite and direct for purposes of Division (A)(3).

Since it has been determined that a school board member is not deemed to have a definite and direct pecuniary interest in his spouse's individual contract of employment with the school district, the collective bargaining agreement from which he receives insurance benefits as a result of his spouse's employment under the agreement, or the school board's procurement of insurance coverage for eligible school district personnel, the school board member will not be deemed to occupy a position of profit in any of the above public contracts if he were to receive insurance coverage under his spouse's "family plan" policy. Therefore, R.C. 2921.42 (A)(3) does not prohibit a member of a city school district board of education whose spouse is employed as a teacher in the same school district from being covered by health insurance which his spouse receives pursuant to a collective bargaining agreement, despite the fact that the school board is required to authorize and enter into a teacher's individual contract of employment, ratify the collective bargaining agreement, and authorize the procurement of health insurance benefits. See R.C. 3319.07, 3319.08, and 3313.202 (A) (described above). See also R.C. 4117.09.

Your attention is directed to R.C. 102.03 (E), which reads as follows:

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 him with respect to his duties.

The term "public official or employee" is defined for purposes of R.C. 102.03 (E) to include any person who is elected or appointed to an office of any governmental entity. See R.C. 102.01 (B) and (C). A member of a board of education is a "public official or employee" for purposes of R.C. 102.03 (E). See Advisory Opinions No. 80-003, 87-008, 89-005, and 90-003.

The term "anything of value" is defined for purposes of R.C. 102.03 in R.C. 1.03 to include money and every other thing of value. See R.C. 102.01 (G) and R.C. 1.03. Insurance coverage is a thing of value for purposes of R.C. 102.03 (E). See Advisory Opinion No. 90-004.

R.C. 102.03 (E) prohibits a public official or employee from accepting or soliciting anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties. R.C. 102.03 (E) does not require that a public official or employee use the authority or influence of his public position to secure the thing of value; it prohibits a public official or employee from merely accepting anything of value if it could impair his objectivity and independence of judgment with regard to his official decisions and responsibilities. See Advisory Opinions No. 87-008, 89-003, 89-006, and 90-004. See also R.C. 102.03 (D) (described below). The application of R.C. 102.03 (E) is dependent upon the facts and circumstances of each individual situation. See Advisory Opinions No. 87-008 and 90-004.

The issue becomes whether, in this instance, the school board member's objectivity and independence of judgment could be impaired if he were to receive insurance coverage through his spouse's family plan.

As stated above, R.C. 3313.202 (A) authorizes the board of education of a school district to "procure and pay all or part of the cost of" various health insurance benefits and other benefits, covering employees of the school district and the dependent children and spouse of such employees. R.C. 3313.202 (D) provides an elected member of a board of education with the option to acquire, from the school district with which he serves, the same insurance coverage which is available to school district employees. R.C. 3313.202 (D), reads in pertinent part:

Any elected member of the board of education and the dependent children and spouse of the member may be covered, at the option of the member, as an employee of the school district under any benefit plan adopted under this section. The member shall pay to the school district the amount certified for that coverage under division (D)(1) or (2) of this section. Payments for such coverage shall be made, in advance in a manner prescribed by the board. The member's exercise of an option to be covered under this section shall be in writing, announced at a regular meeting of the board, and recorded as a public record in the minutes of the board. (Emphasis added.)

R.C. 3313.202 (D) permits an elected member of the board of education to exercise the option available under R.C. 3313.202 (D) and purchase the same insurance coverage which the board of education has procured for employees of the school district and the dependent children and spouse of such employees, regardless of any potential conflict of interest. If it were held that insurance coverage procured by a school board member pursuant to R.C. 3313.202 (D) was of an improper character, then R.C. 102.03 (E) would effectively negate the option which the General Assembly has made available to school board members by enacting R.C. 3313.202 (D).

In the instant situation, the school board member is not exercising the option made available by R.C. 3313.202 (D); rather, he is receiving insurance coverage through his spouse's family plan. As explained above, R.C. 102.03 (E) prohibits a public official from accepting or soliciting an improper thing of value. Since the insurance coverage which the school board member would receive through his spouse's family plan is the same insurance coverage which is available to school board members who exercise the option made available by R.C. 3313.202 (D), the insurance benefits are not an improper thing of value, even though the method by which the school board member acquires them may differ.

However, because the method of acquisition differs in this instance, R.C. 102.03 (D) must be considered. R.C. 102.03 (D) provides:

No public official or employee shall use or authorize the use of the authority or influence of his office or employment to secure anything of value or the promise or offer of anything of value that is of such character as to manifest a substantial and improper influence upon him with respect to his duties.

The Ethics Commission has held that R.C. 102.03 (D) prohibits a public official or employee from using the authority or influence of his office or employment to secure anything of value, including employment and the compensation and benefits resulting from such employment, for himself where the thing of value could impair the official's and employee's objectivity and independence of judgment with respect to his official actions and decisions for his public agency. See Advisory Opinions No. 89-008, 90-004, 90-009, 91-007, and 91-008. In Advisory Opinion No. 92-013, the Commission explained that even though a public official may not have an "interest" in a public contract for purposes of R.C. 2921.42, the official may still receive a definite benefit from a public contract which is authorized by his legislative body. Thus, in Advisory Opinion No. 92-013, the Commission held that R.C. 102.03 (D) prohibits a public official from participating in a public contract which would provide a definite pecuniary benefit to his property, even though he would not have a definite and direct "interest" in the public contract for purposes of R.C. 2921.42.

As stated above, a board of education is statutorily authorized to procure group insurance benefits for school district employees and the employees' dependent children and spouses. See R.C. 3313.202 (A). Also, R.C. 3313.202 (D) provides school board members with the option to purchase insurance coverage which the board of education makes available to its employees. School board members are thus statutorily authorized to establish health benefits and acquire such benefits despite the potential conflict of interest. See Advisory Opinions No. 91-007 and 91-008 (R.C. 102.03 (D) and (E) prohibit city officers from accepting or soliciting, or using the authority or influence of their office to secure, an in-term increase in their compensation). Therefore, R.C. 102.03 (D) does not prohibit school board members who exercise the option to acquire group insurance benefits under R.C. 3313.202 (D) from voting, discussing, deliberating, recommending, or otherwise using their authority or influence as board members to purchase insurance benefits from a firm or to ratify a collective bargaining agreement that will provide group insurance benefits to all eligible school district employees and personnel, including the school board members. However, if a school board member receives insurance coverage under his spouse's family plan instead of purchasing his own coverage as provided by R.C. 3313.202 (D) in the same manner and for the same cost as school board members whose family members are not employed by the school district, then he would receive a definite benefit from the board of education's ratification of a collective bargaining agreement which provides group insurance benefits, since he would be relieved of the cost which he would otherwise have to pay as a board member. The board member would receive the same insurance benefits as other school board members but under more favorable circumstances than school board members who would be required to purchase the insurance.

Therefore, R.C. 102.03 (D) prohibits a member of a city school district board of education who is covered by health insurance which his spouse receives as an employee in the same school district pursuant to a collective bargaining agreement from voting, discussing, deliberating, recommending, or otherwise using his authority or influence as a board member to secure ratification of the collective bargaining agreement.

In addressing your question under R.C. 102.03(D) and (E), this opinion must take note of Advisory Opinion No. 90-004, in which the Ethics Commission was asked the specific question whether a newly elected city council member could continue to receive health insurance benefits

under a plan carried by his spouse who was an elected municipal court judge. The council member's spouse received health care benefits from the city without paying a contribution, but city council members were required to purchase coverage if they desired to avail themselves of health care benefits. The Commission held that R.C. 102.03 (E) does not prohibit a newly elected city council member whose spouse is an elected municipal court judge from continuing to receive, at the same cost, the same health coverage and benefits he was receiving under the policy prior to his election. The Commission held that the council member's objectivity and independence of judgment with regard to the insurance program established by city council could not be impaired by receiving coverage under his spouse's health plan since the council member was continuing to receive coverage under an insurance plan which had been established by council prior to his election. The Commission held, using the holding of Advisory Opinion No. 85-003 as support, that R.C. 102.03 (E) would not prohibit the council member from continuing to receive health benefits under his spouse's policy "until such time as the city council takes action which alters the program available to either the benefit or detriment of the eligible beneficiaries." Advisory Opinion No. 90-004. (Emphasis added.)

As discussed above, this opinion overrules Advisory Opinion No. 85-003, to the extent that it holds that R.C. 2921.42 (A)(4) prohibits a public official from being covered by health insurance received by his spouse as an employee of the same political subdivision. Thus, the support which Advisory Opinion No. 85-003 provided for the dicta in Advisory Opinion No. 90-004, that a council member could not be covered by his spouse's insurance if he served during the time council took action with regard to the health insurance program, has been removed.

Further, the Commission was not asked in Advisory Opinion No. 90-004 whether the city council member could continue to be covered under his spouse's policy if city council altered the program after the council member took office and he did not participate in city council's decision to alter the program. Since the council member's continued receipt of insurance coverage under his spouse's policy after city council altered the program was not directly at issue, Advisory Opinion No. 90-004 did not discuss R.C. 102.03 (D) in this context. Considering Divisions (D) and (E) together in this instance, the school board member is not prohibited by R.C. 102.03(E) from receiving coverage under his spouse's health insurance, but if he does accept such coverage, then Division (D) would prohibit him from participating in the board's ratification of the collective bargaining agreement establishing health benefits for board employees.

The issue remains whether R.C. 102.03 (D) prohibits the school board member from deliberating and voting on matters pertaining to the school board's procurement of health insurance coverage from a firm that will provide group insurance benefits to all school district employees, including his spouse and himself if he receives insurance coverage under his spouse's family plan. Again, it is assumed that the school board member has no financial or fiduciary interest in, and is not employed by, the firm from which the school board is procuring insurance coverage.

As explained above, a school board member who is covered by health insurance which his spouse receives as an employee in the same school district pursuant to a collective bargaining agreement receives the same insurance coverage as a school board member who purchases the insurance coverage pursuant to the provisions of R.C. 3313.202 (D). Therefore, while the school

board member receives insurance coverage under more favorable circumstances than school board members who would be required to purchase the insurance, the actual terms of the insurance coverage procured by the school board uniformly affect all school board members. Since the terms of the coverage are the same, regardless of the cost to any particular school board member, a school board member who is covered by health insurance coverage which his spouse receives as an employee in the same school district would not secure an improper thing of value through such coverage. Therefore, R.C. 102.03 (D) does not prohibit a member of a city school district board of education who is covered by health insurance which his spouse receives as an employee in the same school district pursuant to a collective bargaining agreement from voting, discussing, deliberating, recommending, or otherwise using his authority or influence as a board member to procure health insurance coverage from a firm that will provide group insurance benefits to all eligible school district employees and personnel. Similarly, R.C. 2921.42(A)(1), which 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 family member, or business associate has an interest, would not prohibit the school board member from participating in the procurement of group health insurance since, as explained above, the school board member would not have a definite and direct interest in the board's procurement of insurance from the firm.

Finally, the school board member is subject to Division (B) of Section 102.03 of the Revised Code, which provides as follows:

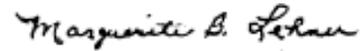
(B) No present or former public official or employee shall disclose or use, without appropriate authorization, any information acquired by him in the course of his official duties which is confidential because of statutory provisions, or which has been clearly designated to him as confidential when such confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary to the proper conduct of government business.

R.C. 102.03 (B) prohibits the school board member from disclosing to his spouse, or any other party, or using, without proper authorization, any confidential information acquired by him in the course of his official duties. It is important to note that no time limit exists for this prohibition and it is effective while he serves on the city school district's board of education and after he leaves office. See Advisory Opinion No. 88-009.

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) This advisory opinion expressly overrules the holding of Advisory Opinion No. 85-003 that a public official who is covered by health insurance received by his spouse as an employee of the official's political subdivision has a prohibited interest in his spouse's contract of employment with his political subdivision for purposes of Division (A)(4) of Section 2921.42 of the Revised Code. The holding of Advisory Opinion No. 85-003 that Division (A)(1) of Section 2921.42 of

the Revised Code prohibits a public official from authorizing or otherwise using the authority or influence of his office to secure approval of a contract of employment for his spouse with the official's political subdivision is not overruled and is expressly affirmed; (2) The Ohio Ethics Law and related statutes do not prohibit a member of a city school district board of education whose spouse is employed in the same school district from being covered by health insurance received by his spouse as an employee of the board member's school district pursuant to a collective bargaining agreement; and (3) Division (D) of Section 102.03 of the Revised Code prohibits a member of a city school district board of education, who is covered by health insurance which his spouse receives as an employee in the same school district pursuant to a collective bargaining agreement, from voting, discussing, deliberating, recommending, or otherwise using his authority or influence as a board member to authorize the collective bargaining agreement; however, the school board member is not prohibited from participating in the board of education's procurement of health insurance coverage from a firm that will provide group insurance benefits to all eligible school district employees and personnel.



Marguerite B. Lehner, Chair
Ohio Ethics Commission