



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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Advisory Opinion Number 93-003
February 12, 1993

Syllabus by the Commission:

(1) Two individuals who serve as board members on the same school district board of education are not "business associates," for purposes of Division (A)(1) of Section 2921.42 of the Revised Code, provided that there is no other business relationship between the board members;

(2) The relationship between two members of the same school district board of education, for purposes of Division (D) of Section 102.03 of the Revised Code, is not of such a character as to impair the objectivity and independence of one board member with respect to matters that affect the personal, pecuniary interests of the other board member, provided that there is no relationship between the board members other than their service on the school district board of education;

(3) One member of a school district board of education, who is also the secretary/treasurer of a regional transit authority, is not prohibited, by Division (A)(1) of Section 2921.42 of the Revised Code, or by Division (D) of Section 102.03 of the Revised Code, from participating as an employee of the regional transit authority in the award or authorization of an authority contract to a company where another member of the school district board of education has an interest in, or would benefit from, the contract.

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You have asked if the Ohio Ethics Law and related statutes prohibit a public official or employee from participating, in his official capacity, in matters which may affect the interests of a person with whom the public official or employee serves on a board of education.

By way of history, you have explained that you are the attorney for a regional transit authority (RTA). Your question concerns the secretary/treasurer for the RTA, who is an appointed employee of the RTA. The secretary/treasurer is also an elected member of a board of education. From time to time, the RTA uses the services of a financial underwriting company for financial advice and assistance. Ordinarily, the secretary/treasurer of the RTA would participate in the preparation of the request for proposal for these services, the review of proposals received, and the recommendation of the successful bidder.

You have explained that a senior member of one of the financial underwriting companies submitting proposals for this RTA work is also an elected member of the board of education on

which the RTA secretary/treasurer serves. You have explained that the senior member of the financial underwriting company has no ownership interest in the company and does not directly service the RTA account, but that he does participate in the company's profit sharing plan and receives an annual bonus based on the overall profits of the financial company over the course of the year. The senior member of the financial company, given these facts, would have a financial interest in his company's contracts with the RTA.

Your question is whether the fact that the RTA secretary/ treasurer and the senior member of the financial underwriting company both serve as elected members of the same school board results in a conflict of interest such that the RTA secretary/ treasurer would be prohibited from participating in matters affecting the financial underwriting company.

It is well settled that a public official or employee is prohibited from participating in matters which affect his own personal, pecuniary interests. R.C. 102.03 (D) and 2921.42 (A)(1). See generally Ohio Ethics Commission Advisory Opinions No. 88-004 and 89-004. Additionally, a public official or employee is prohibited, under certain circumstances, from participating in matters affecting the interests of another party. For example, R.C. 2921.42 (A)(1) prohibits a public official from authorizing, or using the authority or influence of his public office to secure authorization of, a public contract if he or any of his family members or business associates has an interest in the public contract. Additionally, R.C. 102.03 (D) prohibits a public official or employee from using the authority or influence of his office to secure anything of value, or the promise or offer of anything of value, if the thing of value is of such a character as to manifest a substantial and improper influence on the public official or employee with respect to his duties. The Ethics Commission has stated that a public official or employee is prohibited, by R.C. 102.03 (D), from using the authority or influence of his office to secure anything of value for another party if the relationship between the public official or employee, and the other party, is such that the public official's or employee's objectivity and independence of judgment could be impaired. For example, the Commission has stated that R.C. 102.03 (D) prohibits a public official or employee from using his authority or influence to secure anything of value, not only for himself, but for members of his family (see Advisory Opinion No. 92-012), for his business associates, (see Advisory Opinions No. 88-004 and 88-005), for a professional organization on which the public official or employee serves as a board member (see Advisory Opinion No. 90-012), for his private outside employer (see Advisory Opinion No. 91-004), and for other parties if the relationship between the public official or employee and the other parties is such that his objectivity and impartiality of judgment could be impaired.

The secretary/treasurer of a regional transit authority is within the class of persons subject to the prohibitions of both R.C. 102.03 (D) and 2921.42 (A)(1). See R.C. 102.01 (A) and (B); 2921.01 (A). See also Advisory Opinion No. 89-009. Accordingly, the RTA employee in your question is prohibited from authorizing, or using the authority or influence of his office to secure authorization of, a public contract in which any of his business associates has an interest, and from using the authority or influence of his office to secure anything of value for any person with whom the RTA employee has a relationship such that his objectivity and independence of judgment could be impaired, such as his private outside employer and his business associates.

The first question, then, is whether the relationship between the two board of education members constitutes a business association for purposes of R.C. 2921.42 (A)(1).

The Ethics Commission has defined the term "business associates," for purposes of R.C. 2921.42, as parties who are acting together for a common business purpose. See Advisory Opinions No. 85-004 and 86-002. For example, the Ethics Commission has stated that: (1) a private employer is the business associate of his employee (see, e.g., Advisory Opinion No. 78-006); (2) a firm is the business associate of its representatives or agents (Advisory Opinion No. 84-013); (3) law partners are business associates (see, e.g., Advisory Opinion No. 90-007); and (4) business partners are business associates (Advisory Opinion No. 85-004). All of these are relationships of parties involved in common business endeavors. The term "business" is defined, in Black's Law Dictionary, as "[e]mployment, occupation, profession, or commercial activity engaged in for gain or livelihood" and "[a]ctivity or enterprise for gain, benefit, advantage or livelihood." Black's Law Dictionary 179 (5th ed. 1979).

The Constitution of the State of Ohio provides that the law of this State shall make provision for the organization, administration, and control of the schools supported by state funds. Ohio Const. art. VI, § 3. Pursuant to this authority, the General Assembly has organized the public school system in Ohio into school districts. Every school district board of education in Ohio is charged with the responsibility to "provide for the free education of the youth of school age within the district under its jurisdiction." R.C. 3313.48. School district boards of education are composed of members elected by citizens of each school district. R.C. 3313.01 and 3313.08. In order to exercise their duties, school district boards of education are bodies politic and corporate, and have numerous powers, including powers to contract, to sue and be sued, and to acquire and dispose of property. See R.C. 3313.17.

It is unquestionable that a board of education is engaged in the operation of the school district it serves, and that the board members are associated with one another, as the board of education, in the operation of the school district. However, it cannot be said that the individual members of the school district are associated with one another in a common business endeavor. The operation of a school district, or any other public entity, is not the operation of a business as that term is defined. A public entity like a school district may, of course, display some of the indicia of businesses, such as the ability to contract, to purchase and sell property, and to sue and be sued. However, a school district is not a "business," in that it is not an occupation, profession, or commercial activity engaged in for gain, benefit, advantage or livelihood. Cf. Advisory Opinion No. 89-005 (the relationship between a labor union and a member is not a business association, in that a labor union is not engaged in a business). The school board is, instead, a legal entity created by statute for the sole purpose of fulfilling the State's constitutional mandate to provide free public education for school aged children in the district served by the school board.

Therefore, two elected members of a school district board of education, who have no other business ties or connections, are not considered "business associates" for purposes of R.C. 2921.42 (A)(1), and the school board member who is also the RTA secretary/treasurer is not prohibited, by R.C. 2921.42 (A)(1), from participating in matters affecting a contract in which another school board member has a personal, pecuniary interest.

The remaining question is whether R.C. 102.03 (D) would prohibit the RTA secretary/treasurer from participating in matters affecting the interests of the other school board member. R.C. 102.03 (D) prohibits a public official or employee from using the authority of influence of his office to secure anything of value for another party if the thing of value could have a substantial and improper influence upon the official or employee in the performance of his duties. The RTA's payments for financial services to the underwriting company, and the senior member's share of profits therefrom, constitute a thing of value for purposes of R.C. 102.03 (D). See R.C. 1.03; 102.01 (G). See also Advisory Opinions No. 89-004 and 90-002.

For purposes of R.C. 102.03 (D), a public official or employee is prohibited from participating in matters involving the personal, pecuniary interests of another person, if the relationship between the public official or employee and the other party is such that the official's or employee's objectivity and independence of judgment could be impaired. See Advisory Opinions No. 88-004, 88-005, 90-012, 91-006, and 92-012. The issue, therefore, is whether the relationship between the two school board members is of such a character that the objectivity and independence of judgment of the RTA secretary/treasurer could be impaired in matters affecting the interests of the other school board member.

The Ethics Commission has stated that a public official or employee is prohibited, by R.C. 102.03 (D), from participating in matters affecting the interests of certain persons with whom he has a business or professional relationship. For example, a public official or employee is generally prohibited from participating in matters that affect the pecuniary interests of his business associates. Advisory Opinion No. 88-004. The Commission has stated that a public official or employee is prohibited, by R.C. 102.03 (D), from participating in matters in which his outside employer has an interest, because an employer stands in a position of power and authority over an employee, and thus the relationship between the employer and employee is such that it could impair the employee's objectivity and independence of judgment in matters that involve the interests of his employer. Advisory Opinions No. 88-005, 89-008, 90-008, and 91-006. A partner in a law partnership is prohibited, by R.C. 102.03 (D), from participating in matters where his law partners have an interest through client fees, because the relationship among law partners is such that it could impair the objectivity and independence of one partner if he participated as a public official in matters affecting any other partner. Advisory Opinions No. 89-016 and 90-007. See also Advisory Opinion No. 90-008. Additionally, the Ethics Commission has stated that the relationship between an individual and an organization on which he serves as a board member is such that the individual's objectivity could be impaired if he participated, as a public official or employee, with respect to matters affecting the board, and, therefore, the individual is prohibited from participating in matters where the board's interests are affected. Advisory Opinions No. 90-012 and 92-004.

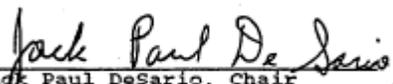
The relationship you have described is not a business association, as discussed above in connection with R.C. 2921.42 (A)(1). Moreover, there is nothing to suggest that the relationship between two elected school board members, where there is no other tie between the two individuals, is such that the relationship could impair the objectivity and independence of judgment of either of the elected officials with respect to the other's financial interest. Cf. Advisory Opinion No. 92-010 (where two independently elected office holders also have a relationship, such as a marital relationship, in addition to their relationship as public officers, the

objectivity and independence of judgment of the office holders could be impaired by their marital relationship, rather than by their relationship as officer holders). Both members of the school district board of education in your question are independently elected office holders serving the constituents of the district. Neither elected board member serves in a position of supervisory or regulatory authority over the other. The personal financial interests of one school board member are not dependent upon the other school board members. Cf. Advisory Opinion No. 92-003. A school board member does not have the authority to remove another school board member, set another member's compensation, or act as a check upon the other school board members. See Advisory Opinion No. 92-010.

Therefore, R.C. 102.03 (D) does not prohibit the secretary/ treasurer of an RTA who also serves as a school board member, from participating as an employee of the RTA in any aspect of the decision of the RTA to enter into a contract with a company, where another member of the school district board of education would have an interest in, or benefit from, the contract. Cf. Advisory Opinion No. 91-006 (an employee of a school district board of education, who is also a city council member, is prohibited, by R.C. 102.03 (D), from participating in city council matters that affect the interests of the school district).

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 opinion of the Ohio Ethics Commission, and you are so advised, that: (1) Two individuals who serve as board members on the same school district board of education are not "business associates," for purposes of Division (A)(1) of Section 2921.42 of the Revised Code, provided that there is no other business relationship between the board members; (2) The relationship between two members of the same school district board of education, for purposes of Division (D) of Section 102.03 of the Revised Code, is not of such a character as to impair the objectivity and independence of one board member with respect to matters that affect the personal, pecuniary interests of the other board member, provided that there is no relationship between the board members other than their service on the school district board of education; and (3) One member of a school district board of education, who is also the secretary/treasurer of a regional transit authority, is not prohibited, by Division (A)(1) of Section 2921.42 of the Revised Code, or by Division (D) of Section 102.03 of the Revised Code, from participating as an employee of the regional transit authority in the award or authorization of an authority contract to a company where another member of the school district board of education has an interest in, or would benefit from, the contract.


Jack Paul DeSario, Chair
Ohio Ethics Commission