



Board member compensation, benefits and expense reimbursement

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This fact sheet is designed to address the most frequently asked questions about board member compensation and other benefits. The information is of a general nature. Readers should seek the advice of legal counsel regarding specific legal problems or questions.

May board members be paid?

Under the statute, board members may be compensated for their service up to \$125 per meeting (Ohio Revised Code Section (RC) 3313.12, 3311.19). Boards are not required to pay the statutory maximum but may choose to compensate at any rate up to the statutory maximum. The statute also provides that all board members except for joint vocational board members are prohibited from receiving more than \$5,000 per year in total compensation (RC 3313.12). In addition to being compensated for their attendance at meetings, educational service center and joint vocational board members may be reimbursed for mileage to and from board meetings at a rate set by the board (RC 3311.19).

How may board compensation be increased or decreased?

The Ohio Constitution prohibits increases or decreases in compensation for public officials during a term of office (Ohio Constitution Article II, Section 20). This prohibition precludes public officials from using their influence to obtain a legislative salary increase and protects officials from a reduction in their compensation by the appointing authority or the public after their term of office begins (*Musser v. Morton*, 639 F.2d 309 (6th Cir.1981)).

A board may pass a resolution or change board policy to adjust board compensation amounts at any time, but those changes will apply only to board members beginning new terms or for those appointed to a vacancy after the change is made.

For example, assume three board members are up for re-election in November 2019. The remaining two board members' terms do not expire until December 2021. In October 2019, the board votes to increase its pay from \$80 per meeting to \$125 per meeting. The three new board members will be paid \$125 per meeting for all meetings beginning in January 2020. The two members who are continuing in office will receive \$80 per meeting through the end of their terms. If they choose to run and are re-elected in November 2021, they will be compensated \$125 per meeting beginning in January 2022.

The best time to change compensation is prior to board elections in September or October of odd years. This way, the changes will take effect when new board members take office in January of even years. An Ohio Ethics Commission (OEC) opinion held that public officials are prohibited from enacting or receiving increases in compensation for a position after their re-election to the position and *prior* to the beginning of their new term. Ohio Ethics Laws prohibit these actions because the increase in compensation, to which the public officials are entitled solely by their own actions, may manifest an improper influence upon the officials and impair their independence of judgment on behalf of the public interest (OEC Advisory Opinion No. 96-001).

This fact sheet is published as an OSBA membership service

For more information on this subject, please contact OSBA's Division of Legal Services

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What constitutes a meeting for which board members may receive compensation?

A meeting is defined by the Ohio Open Meetings Act (RC 121.22) as “any prearranged discussion of the public business of the public body by a majority of its members.” There is no statutory limitation on the number of meetings for which a board member may be compensated, although any board may impose such a restriction by policy. However, as previously stated, all board of education members except for joint vocational board members are prohibited from receiving more than \$5,000 per year in total compensation under RC 3313.12. Board members must be physically present to receive compensation.

May the maximum number of meetings for which board members may be compensated be increased or decreased?

If the board has adopted a policy that limits the number of meetings per year for which board members may be compensated, that number must remain static during the board member’s term. Of course, a board may change the number of meetings it holds at anytime; the issue is compensation for those additional meetings. A change to increase the number of meetings for which a board member may be paid has been interpreted as an increase in compensation. As a result, a board may pass a resolution or change its policy to increase the number of meetings per year for which board members may be compensated, but the change will not become effective until board members begin new terms after the effective date of the board’s action.

May board members be compensated for attending trainings?

Each board of education may authorize its members to be compensated for attending approved training programs (RC 3313.12 and RC 3311.19). The rate of compensation authorized by law is up to \$60 a day for attendance at a training program of three hours or fewer and up to \$125 per day for attendance at a training program longer than three hours.

Just as boards may choose the rate of compensation up to the statutory maximum for attending meetings, they also are authorized to set the amount for attending a training program.

May I be reimbursed for my expenses?

RC 3315.15 permits districts to create a “service fund,” which can be used to pay those expenses actually incurred by board members in the performance of their official duties. The fund also can be used to pay the expenses actually incurred by board members-to-be for training and orientation to the performance of their duties that occurs between the date of election or appointment and the date of administration of the oath of office. The board’s policy and regulations should set forth the permissible expense reimbursement amounts, limits and procedures. This fund pays for registration, travel and other expenses and is different from board member compensation for attending training.

May the board increase the rate of reimbursement?

The Ohio Attorney General has held the constitutional prohibition against compensation increases and decreases for public officials during their terms of office not only prevents public officials from receiving an increase in their fixed salaries but also prevents them from receiving an increase in the amount allowed for the expenses incurred in performing their official duties. Therefore, a board may pass a resolution or change board policy to increase rates of reimbursement, but any changes will not become effective until board members begin new terms after the effective date of the board’s action (1985 Ohio Atty.Gen.Ops. No. 85-036).

May a board member waive compensation or request that their compensation be given to the school district?

Nothing prohibits a board member from individually and voluntarily waiving all or a portion of his or her compensation or “donating” compensation back to the school district. In these cases, neither the appointing authority nor the public has decreased the board member’s compensation, so the principal mischief at which the constitutional prohibition is aimed is not present.

However, board members should be aware that there might be tax implications associated with declining compensation. Since the income is made available to the board member without restrictions, the IRS may find that the board member is in constructive receipt of the compensation and may tax the board member accordingly. Board members should consult with a tax advisor on the tax consequences of waiving compensation.

To avoid the tax issue, the school district could issue the board member a check with the appropriate tax withholdings. The board member then may choose to make a donation back to the school district. Donations from board members

should be handled in the same manner as other gifts or donations made to the district.

May I accept additional compensation from vendors or other groups for my board service?

No. The Ohio Ethics Laws (RC Chapter 102 and RC 2921.42 and 2921.43) prohibit a public official, including a school board member, from:

- soliciting, accepting or using the authority of his or her public position to secure a gift, meal, entertainment or other thing of value if it is of a substantial nature and provided by someone that is regulated by, interested in matters before, or doing or seeking to do business with the agency he/she serves;
- accepting anything, regardless of its value, if the item is provided to the official as compensation for the performance of his or her public duties.

Does board service qualify for State Teachers Retirement System, School Employees Retirement System (SERS) or Ohio Public Employees Retirement System service credit?

Within 30 days of taking office, board members must choose whether to participate in SERS. The choice must be made in writing and must be given to the school district's treasurer. Failure to choose is deemed a rejection of membership. The choice cannot be changed after it is made. If a board member does not become a member of the retirement system, the board member is prohibited from making a claim for service credit from the system (RC 3309.012). A board member who joins SERS will receive credit for their years of service as a board member in accordance with SERS rules and may be able to transfer those credits to other state retirement systems. Board members who are interested in transferring credits should contact their retirement system.

May a board member obtain health benefits from the district?

RC 3313.202 permits board members, spouses and dependent children to elect to participate in the health care plan provided to employees of the district. Board members who elect to participate are required to pay the full amount of the premiums, which may be deducted from amounts owed to the board member as compensation. Participation in the district's health care plan must be made in writing, announced at a regular public board meeting and recorded in the minutes of the board.

The information in this fact sheet is designed to provide authoritative general information. It should not be relied upon as legal advice. If legal advice is required, the services of an attorney should be obtained.