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Paul M. Nick
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January 11, 2019

[REDACTED]
[REDACTED]

Dear [REDACTED]

On January 9, 2019, the Ohio Ethics Commission received your letter requesting an advisory opinion on behalf of a member of the [REDACTED] District (district). This opinion is based on the facts you provided in your letter.

For purposes of this opinion, the Commission staff assumes:

- You are the district superintendent.
- A district board of education member would like to accept a coaching position with the district. You proposed three possible scenarios under which he could provide coaching services to the district: as a paid coach; as a coach under a supplemental coaching contract with no compensation and limited or no other tangible benefits; or as a volunteer coach.

Question Presented and Brief Answer

Can the district board member also be a district coach?

A district board member is prohibited from being a compensated district coach. The Ethics Law does not prohibit a board member from volunteering his coaching services to the district; however, he is prohibited from receiving any financial benefit or compensation for his services. Additionally, if the board member serves as a volunteer coach, he is prohibited from participating in matters that uniquely affect the individual interests of the athletic department's personnel.

Prohibitions Outside the Ethics Law

Before discussing the Ethics Law, it is important to note that statutory provisions outside the Ethics Law also restrict the board member's conduct. In particular, R.C. 3313.33 provides that: "No member [of the board of education] shall have, directly or indirectly, any pecuniary interest in any contract of the board."¹ The Ethics Commission has no authority to interpret or enforce R.C. 3313.33. You should contact the legal advisor for the district to determine whether

any of the activities you have described would violate the prohibition in R.C. 3313.33, any other law outside the Ethics Law, or any district rules or bylaws.

Having an Interest in a Public Contract—R.C. 2921.42(A)(4)

A public school board member is a “public official”² subject to 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 the public official is connected.

R.C. 2921.42(A)(4) prohibits a public official, including a school board member, from having a financial or a fiduciary interest in a “public contract” entered into by, or for the use of, the political subdivision he serves. A “public contract” is the purchase or acquisition or a contract for the purchase or acquisition, of property or services by a public entity, including public employment.³ If the school board member is paid by the district for his coaching services, he would have a prohibited financial interest in a district contract.⁴

Therefore, R.C. 2921.42(A)(4) prohibits the school board member from serving simultaneously as a paid district coach.⁵

Under certain circumstances, R.C. 2921.42(C) provides an exception to the prohibition of R.C. 2921.42(A)(4), but it usually cannot be met where the interest involved is an interest in a public employment contract.⁶ Also, it is unnecessary to consider the application of the exception to many elected officials because they are also prohibited from having an interest in a public contract or from holding other public positions by other provisions of law.⁷ As noted above, you should contact the legal advisor for the district to determine whether any of the activities you have described would violate the prohibition in R.C. 3313.33. There are limited exceptions to R.C. 3313.33 and the public contract exceptions in the Ethics Law do not apply to R.C. 3313.33.⁸

Donating Services

You asked if the school board member could provide coaching services to the district on a volunteer basis. The Commission has determined that a donation of goods or services by a public official to the political subdivision which he serves would not result in the public official receiving any financial gain, absent facts indicating otherwise.⁹ Therefore, a public official who donates goods, services, or money to the political subdivision with which he serves would not be considered to have an interest in a public contract with his own political subdivision, provided that he does not receive any financial benefit from the donation.¹⁰ Therefore, the school board member could donate his coaching services to the school district provided that he does not receive any monetary gain from the transaction.

Conflict of Interest Prohibitions—R.C. 102.03(D) and (E)

A member of the school board, is a “public official”¹¹ subject to the restrictions in R.C. 102.03(D) and (E), which provide:

- (D) No public official or employee shall use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person’s duties.
- (E) 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 the public official or employee with respect to that person’s duties.

“Anything of value” includes money, goods, chattels, promissory notes, warrants, checks, rights in action, real estate, and every other thing of value.¹² In addition, the beneficial or detrimental economic impact of a decision by a public decision-making body is a thing of value.¹³

In Advisory Opinion No. 2001-01, the Commission concluded that a city council member who also served as an unpaid paramedic for the city volunteer fire department was prohibited from participating in matters that affected the fire department’s personnel. The Commission determined that anything of value that resulted from council decisions affecting the fire department’s personnel was of such a character as to manifest a substantial and improper influence upon the council member who also served as a volunteer paramedic with respect to the performance of his duties.

Likewise, a school board member who is an uncompensated coach for the district would be prohibited from voting, discussing, deliberating, or taking any other action on matters that affect the personnel of the high school’s athletic department. For example, he would be prohibited from discussing, deliberating about, or otherwise participating in decisions before the school board affecting the employment, compensation, or benefits for the high school’s athletic director or other department personnel. These would include matters such as changes in compensation or benefits determined by individual working conditions, the assignment of duties, evaluations, and actions involving promotions, discipline, lay-offs, and termination.¹⁴

However, the board member would not be prohibited from participating in matters that affect all athletic department personnel within the district uniformly and without unique or special benefit to any particular official or employee in the school athletic department for which he is a volunteer.¹⁵ He is also not prohibited from participating in general budgetary matters and appropriations of funds to the school where he coaches even though the budget and appropriations may include funding for the athletic department and compensation and benefits for its officials and employees.¹⁶

This opinion represents the views of the undersigned, based on the facts presented and the precedent of the Commission. 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. Please contact this office again if you have any other questions or if you wish to request reconsideration of this opinion under OAC 102-3-07.

Sincerely,



Karen R. King
Staff Advisory Attorney

Enclosure: Selling Goods or Services to Public Agency (Local) (Information Sheet #2)
Advisory Opinions No. 90-003 and 2001-01

The Ohio Ethics Commission Advisory Opinions referenced in this opinion are available on the Commission's Web site: www.ethics.ohio.gov.

¹ See Ohio Ethics Commission Advisory Opinion No. 78-006.

² Adv. Ops. No. 85-009 and 90-003.

³ R.C. 2921.42(I)(1)(a). See Adv. Ops. No. 90-003 and 85-009. See also Adv. Op. No. 90-005 (competitively bid, formal written contracts, and casual, as-needed purchases are all public contracts).

⁴ See Adv. Op. No. 2000-05.

⁵ See Adv. Op. No. 2001-01.

⁶ The Ethics Commission has recognized that when the subject of a public contract is public employment or the provision of professional services, for example, legal services, "[i]t would be extremely difficult to demonstrate that [the] legal services would be 'unobtainable elsewhere for the same or lower cost.'"

⁷ See Adv. Ops. No. 93-008 (school board members subject to R.C. 3313.33) and 84-006 (township trustees subject to R.C. 511.13). See also 2007 Ohio Atty.Gen.Ops. No. 2007-044 and 2008 Ohio Atty.Gen.Ops. No. 2008-002 (exceptions set forth in R.C. 2921.42 do not apply to the broader prohibition imposed by R.C. 511.13). See 2008 Ohio Atty.Gen.Ops. No. 2008-002 (a township trustee who is employed by an entity that has a contract with the township has an interest in the contract for purposes of R.C. 511.13).

⁸ The Attorney General has held that the exception in R.C. 2921.42(C) does not apply to R.C. 3133.33. 1999 Ohio Atty.Gen.Ops. No. 99-023. See also Adv. Op. No. 93-008.

⁹ Adv. Op. No. 90-003.

¹⁰ *Id.*

¹¹ R.C. 102.01(B) and (C). See also Adv. Op. No. 90-003.

¹² R.C. 1.03,

¹³ Adv. Ops. No. 85-012, 90-002, and 90-012.

¹⁴ Adv. Op. No. 2001-01.

¹⁵ *Id.*

¹⁶ *Id.*