



February 2009

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2008 Ohio Ethics Commission Opinions: School District Advisories

In 2008, the Ohio Ethics Commission issued a number of advisory opinions and other guidance on issues of interest to school districts. These opinions serve as a reminder to school officials and employees that their actions are often covered by ethics laws that affect hiring and contracting procedures. Below is a summary of those recent opinions, with a brief description of the advice provided. If you are interested in further information on any of these topics, please contact one of the lawyers listed in this Update or the Squire Sanders lawyer with whom you work.

Prohibited Public Contracts

Teachers Restricted in Providing Supplemental Education Services

November 12, 2008

Formal Advisory Opinion 2008-04

The Ethics Commission considered whether a school district employee could enter into a contract with the district where he or she worked to provide "supplemental education services" (SES). The Commission explained that typically such a contract is prohibited under R.C. 2921.42, an ethics statute that prohibits a public official (including both teachers and administrators) from having an "interest" in the profits or benefits of a public contract entered into by or for the use of the public agency with which the employee is connected. Thus, the SES contract was prohibited *unless* the district employee could meet the four-part test in R.C. 2921.42(C) including the requirement that the individual provide SES to the district at a lower cost than any other SES provider. A similar, informal advisory opinion was issued on October 2, 2008 addressing a specific situation.

Public Officials and Employees Prohibited From Hiring Family Members

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May 29, 2008
Bulletin on Nepotism

The Ethics Commission issued a special bulletin reminding public officials and employees (including those in school districts such as teachers and administrators) about the restrictions against hiring family members, even for part-time or seasonal jobs, or for other contracts. The bulletin explains that public officials may not hire a family member for a public job, use their position to obtain a public job for a family member or even use their position to obtain promotions, raises or other benefits for family members. In Formal Advisory Opinion 2008-03 the Ethics Commission clarified that stepchildren are considered family members for purposes of these rules.

Public Official Fundraising for Private Organizations Limited

December 23, 2008

Informal Advisory Opinion

Although this opinion is not directed at school districts, it is relevant because it involves the creation of a 501(c)(3) organization to raise funds for donation to a public agency, a practice that occurs with regularity in connection with school districts. The Ethics Commission provided guidance as to procedures that must be followed when a public official raises funds for that organization. The public agency must assure the potential contributor that contributions are voluntary and not made in return for contracts, grants or other favors; no contribution will be accepted while the potential contributor has a matter pending before the agency or it is reasonably foreseeable that it will; and contributions may not be given in a manner that limits the public agency's discretion in spending the contributions. The opinion includes other detailed guidance as well.

Prohibited Supplemental Compensation

Boosters May Not Compensate Coaches

April 11, 2008

Formal Advisory Opinion 2008-01

The Ethics Commission considered whether a coach or other school employee could accept compensation from a booster organization or any other private support organization. The Commission explained that a district employee (including teachers and administrators) could not accept compensation from any source in exchange for performing duties authorized by the school board. However, if so desired, the booster club or other funding source could make a donation to the school district, which could in turn use that money in whatever way it chooses and is permissible under school regulations. The donation may not be directed or understood to be for the purpose of compensating employees or funding positions.

Organizations May Not Supplement Teacher

Compensation Through Prizes

April 29, 2008

Informal Letter Opinion

The Kenston Foundation, a 501(c)(3) organization whose mission is to act in support of educational excellence in the Kenston Local School District, inquired whether it could give a "prize trip" to a teacher from a random drawing for which entry tickets were to be purchased in their "honor." The Ethics Commission explained that a teacher could not accept such a prize and the Foundation could not offer such a prize, without violating R.C. 2921.43(A)(1), which prohibits supplemental compensation to public employees including teachers and administrators. The decision relied on Formal Advisory Opinion 2008-01 (discussed above).

Guidance on Outside Employment

Although the ethics laws do not prohibit public employees, including school district employees, from private employment during nonschool hours, there are restrictions. And although the Ohio Ethics Commission has not published "safe harbor" guidelines for the provision of private services such as tutoring or training, a conservative approach indicates the following steps will help protect teachers and other district staff from potential ethics violations:

- If use of school property or equipment is necessary to perform the private services, all school board policies, rules and regulations generally relating to such use by the public, including those pertaining to the payment of fees, must be followed.
- Avoid advertising the teacher's connection to the school district or implying a district endorsement; include a disclaimer on the advertising.
- Do not advertise on school time or in the classroom.
- Avoid situations in which a student or parent may believe that the outside lessons or tutoring are required or will have any improper impact on school-related evaluations or standing.
- If similar services (such as equivalent tutoring, music lessons or athletics training) are provided by the school district without charge, the student should be made aware of those services.

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations. Counsel should be consulted for legal planning and advice.

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February 2009