

OHIO ETHICS COMMISSION

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David E. Freel, *Executive Director*

INFORMATION SHEET: ADVISORY OPINION NO. 2008-01 **SCHOOL OFFICIAL OR EMPLOYEE RECEIVING** **SUPPLEMENTAL COMPENSATION FOR COACHING**

What is the question addressed in the opinion?

Does the Ethics Law prohibit a school employee, who is compensated by the board of education to serve as a coach or provide support for a school-related activity, from receiving compensation for the same services from any other source, including a booster group or other school support organization?

What is the answer in the opinion?

Yes. The Ethics Law and related statutes prohibit a school district employee from receiving compensation from any other source in exchange for the performance of the duties that the district board of education has authorized the employee to perform.

The law does not prohibit a booster group, school support organization, or other source that supports activities of a school district, from making a voluntary gift to the district. The district can use the donation in whatever way it chooses, within the limitations in the Ethics Law discussed in this opinion.

To whom does this opinion apply?

This opinion applies to any school district, educational service center (ESC), or community school official or employee who is paid by the district, ESC, or community school to provide coaching or other support to school-related activities.

When will the conclusions of the opinion become effective?

The opinion became effective, with changes requested, upon acceptance by the Commission.

For More Information, Please Contact:

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IT IS NOT AN ETHICS COMMISSION ADVISORY OPINION.
ADVISORY OPINION NO. 2008-01 IS ATTACHED.**

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Advisory Opinion
Number 2008-01
April 11, 2008

Syllabus by the Ohio Ethics Commission:

- (1) Division (A)(1) of Section 2921.43 of the Revised Code prohibits a public servant from soliciting or accepting, and prohibits any person from promising or giving a public servant, except as allowed by law, any compensation: (a) to perform his or her official duties; (b) to perform any other act or service in his or her public capacity; (c) for the general performance of the duties of his or her public office or public employment; or (d) as a supplement to his or her public compensation;
- (2) R.C. 2921.43(A)(1) prohibits a school district employee who is compensated by the district to provide coaching or other services in connection with any school-related activity from also accepting payment for the same services from any other person, including a booster group or other school support organization;
- (3) R.C. 2921.43(A)(1) prohibits any person, including a booster group or school support organization, from promising or giving compensation to a school district employee for coaching or other services provided by the employee in connection with any school-related activity;
- (4) The Ethics Law and related statutes do not prohibit any person, including a private organization that supports activities of the school, from making a voluntary gift or endowment to the district for use as the district chooses, subject to limitations in the Ethics Law discussed in this opinion;
- (5) The conclusions in this opinion apply to officials and employees of all city, local, exempted village, joint vocational, municipal, and cooperative education school districts and educational service centers, and any community school operating pursuant to a contract as described in Section 3314.03 of the Revised Code.

* * * * *

You have asked several questions pertaining to the source of payments for school district employees performing coaching and other services in connection with sports and other school-related activities. You have asked about the application of the law to a number of different employees paid by the district to provide services under supplemental contracts as permitted by state law: (1) teachers; (2) non-teaching employees; (3) administrators; (4) supervisors; and (5) management-level employees.

Specifically, you have asked whether the Ethics Law and related statutes prohibit school district employees, who are paid by the district to perform coaching and other services, from also receiving compensation from a booster group or other school support organization to perform the same services.

Supplemental Compensation—District Officials and Employees

The supplemental compensation law, R.C. 2921.43(A), applies to any “public servant,” which includes any school district official or employee, including an athletic coach, administrator, supervisor, management-level employee, or teacher, regardless of his or her duties and responsibilities. R.C. 2921.01(A) and (B); Ohio Ethics Commission Advisory Opinions No. 93-017 and 2001-04. R.C. 2921.43(A) provides that no public servant shall knowingly solicit or accept and no person shall promise or give a public servant either:

- (1) Any compensation, other than as allowed by . . . law, to perform the public servant’s official duties, to perform any other act or service in the public servant’s public capacity, for the general performance of the duties of the public servant’s public office or public employment, or as a supplement to the public servant’s public compensation;
- (2) Additional or greater fees or costs than are allowed by law to perform the public servant’s official duties.¹

In order to apply R.C. 2921.43(A)(1) to a situation where a public servant is offered or given something of value, two elements must be established. First, it must be determined whether the thing of value is compensation. Second, it must be determined whether the compensation is being promised or given to the public servant for any of the following purposes:

- (a) To perform his or her official duties;
- (b) To perform any other act or service in his or her public capacity;
- (c) For the general performance of the duties of public office or employment; or
- (d) As a supplement to public compensation.

¹ There are three specific exceptions to this provision, set forth in R.C. 102.03(G), (H), and (I). The exceptions apply to campaign contributions, honoraria, and travel expenses and are not relevant to your question.

The prohibition against a public servant receiving compensation, except as allowed by law, for the performance of his or her public duties prevents the public servant from being in a position of serving two employers and helps to ensure his or her objectivity. Adv. Op. No. 89-013. As explained by the Supreme Court of Ohio, in *Somerset Bank v. Edmund* (1907), 76 Ohio St. 396, 403 and 405:

[I]t is contrary to public policy and sound morals, and a violation of well established legal principles, to permit a public officer to accept an offer of reward for the performance of a service which the law enjoins upon him as a duty. . . . [B]oth public policy and sound morals forbid that he should be permitted to demand or receive for the performance of a purely legal duty any fee or reward other than that established and allowed by law as compensation for the services rendered.

Compensation

The word “compensation” is not defined in or for R.C. 2921.43. The Ethics Commission has explained that, according to a primary rule of statutory construction that words in statutes must be construed according to rules of grammar and common usage and “in light of the mischief they are designed to combat,” “compensation” is defined as “payment for services: esp., wages or remuneration.” Adv. Op. No. 92-014 (referring to R.C. 1.42 and quoting *City of Mentor v. Giordano* (1967), 9 Ohio St.2d 140, 144).

“Compensation” is defined for purposes of the Chapter 102. (the Ethics Law) as “money, thing of value, or financial benefit.” R.C. 102.01(A); Adv. Op. No. 2007-03. While this definition does not apply directly to the use of the term in R.C. 2921.43, it is consistent with the definition the Commission has adopted for “compensation” as used in R.C. 2921.43(A)(1). Adv. Op. No. 92-014.

In other words, any thing of value that is given for services can be compensation, whether it is in the form of cash, tangible goods or chattels, or other financial gains or benefits that accrue to the public servant. The services performed by the public servant may be provided for the specific benefit of the individual offering the compensation or for the general benefit of the public agency and the citizens served by the agency. As the Jackson County Court of Common Pleas explained in *State v. Livesay* (1998), 91 Ohio Misc. 2d 208 at 214:

If words are to be given their ordinary meaning, as is required in R.C. 1.03, then it may be best to begin with the definition of “compensation,” since the legislature chose that word. “Compensation” generally means an exchange in return for or to requite some obligation, tit for tat, so to speak. The legislature could have used the phrase “anything of value” or “payment,” but chose the word “compensation” to require as an element of the crime that there be an exchange, i.e., one person gets something from another.

The Attorney General explained, in an advisory opinion written before 1986, when the Commission was empowered to interpret R.C. 2921.43:

R.C. 2921.43(A) is a codification of the common law rule that a public officer may not receive remuneration other than that allowed by law for the performance of his official duties. (Citations omitted.) Public officials and employees are not permitted to receive payment other than that provided by law for performing those duties for which they are responsible in their official capacity. (Citations omitted.)

1984 Ohio Atty.Gen.Op. No. 84-019. In a more recent case, the Eighth District Court of Appeals contrasted criminal conduct prohibited by the supplemental compensation provision in R.C. 2921.43(A) with that prohibited by the bribery restriction in 2921.02(B): “The bribery statute prohibits a public servant from receiving money to perform his job duties ‘*wrong*,’ while R.C. 2921.43(A) prohibits a public servant from receiving money to perform his job duties ‘*right*.” (Emphasis added.) *State v. Capko* (Mar. 29, 1990), 8th Dist. No. 56814, at 10.

In enacting R.C. 2921.43(A), the General Assembly intended to protect the public by ensuring that a public servant would serve only the public, and the performance of his or her job duties would not be influenced by the public servant’s obligation to any *other* source of compensation. Adv. Op. No. 93-013 (“R.C. 2921.43 (A) is . . . intended to prevent situations where a public servant is answering to both a public and a private master in the performance of his public duties.”) The purpose for which a person offers compensation may be to reward the efforts of a public servant that are directed toward the outcomes favored by the donor. However, the purpose may also be a more benign attempt to recognize exemplary service of the public servant on behalf of the public.

Compensation provided to a school district employee for the services he or she performs coaching or providing support to sports or other school-related activities, from any source other than the district, such as a booster group or school support organization, would be provided in exchange for the general performance of the duties that the district pays the employee to perform or provided as a supplement to his or her public compensation. Therefore, R.C. 2921.43(A)(1) prohibits school district employees who provide coaching or other support to a public activity program from soliciting or accepting compensation other than as allowed by law to perform coaching or other duties related to sports or other school-related activities. For the performance of their public duties, school district employees can receive only the compensation that is provided by the district pursuant to the terms of the employment relationship, and any lawful supplemental contract. See R.C. Chapters 3313. and 3319. This assures that the school district employees are responsive and responsible to the district, rather than to any outside source of compensation.

R.C. 2921.43(A)(1) also prohibits a booster club, school support organization, or any other source from providing compensation directly to school district employees for the performance of coaching duties. The district is the only lawful source of compensation, for coaching duties, to officials and employees engaged to perform those duties.

Gift or Endowment to the District

In some cases, booster clubs, school support organizations, and other sources may want to donate money to the district to support district activities. If an outside source were voluntarily to donate money to the district in order to support sports or other extracurricular activities, it must be determined whether the district can use the funds to provide compensation to employees performing coaching duties.

R.C. 2921.43(A)(1) prohibits compensation to school district employees except as allowed by “provisions of law.” R.C. 3313.36 provides that, upon adoption of a resolution, a board of education may accept “any gift or endowment upon the conditions and stipulations . . . connected with the gift or endowment.” The board is empowered to make all rules required to fully carry the conditions and limitations on which the gift or endowment is made. R.C. 3313.36. However, R.C. 3313.36 also provides: “No such . . . gift or endowment shall be accepted by the board if the conditions remove *any portion of the public schools from the control of the board.*” (Emphasis added.)

A board of education has sole authority to hire, direct, and set the salaries for district employees. See R.C. 3319.01 (superintendent), R.C. 3313.22 (treasurer), R.C. 3319.02 (assistant superintendent, principals, and other administrators), R.C. 3319.03-5 (business manager), R.C. 3319.07-8 (teachers), R.C. 3319.081-2 (non-teaching employees), and R.C. 3313.53 (non-licensed individuals to direct, supervise, or coach pupil activity programs). The board has the authority to evaluate and manage the performance of employees. *Id.* The board also has the authority to retain, terminate, or suspend these employees. R.C. 3319.01, 3319.02(D)(3), 3319.08, 3319.081(C), 3319.16, 3319.172, and 3313.53 (D)(2) and (F).

The Commission must consider the combined application of R.C. 2921.43(A)(1) and the laws governing the operation of school districts. The laws, in concert, require that, while a district can accept a gift or endowment, it cannot accept a gift or endowment that removes any of the board’s control and independent determination, on behalf of the public, over the creation or funding of any position with the district, and the selection, hire, direction, setting of compensation for, evaluation, management, retention, advancement, termination, or suspension of any employee serving in any position with the district.

Therefore, while a district can accept a gift or endowment that the giver intends will be used by the district to fund positions or compensate employees, the district is not required to use the donation as directed by the giver.² Such a direction would remove a portion of the public schools—determining the need for and funding employment positions with the district—from the board’s control. If a school district employee were to receive compensation as directed from an outside source, even if it is passed-through the district, the citizens served by the district could not be assured that their public servants are receiving compensation solely from public funds.

² This opinion does not consider, or reach any conclusions, about endowed faculty positions.

Further, the source of the compensation would be doing indirectly (providing additional compensation, through the district, to the employee for performing his or her job duties) that which it is lawfully prohibited from doing directly. See *City of Parma Heights v. Schroeder* (C.P. 1969), 26 Ohio Op. 2d 119, 122. The Commission has explained that the prohibition against providing compensation applies if the source gives the additional compensation directly to the public official or employee, but also applies when the source gives money intended to compensate specific employees or positions to the public employer who in turn pays it to the official or employee. Adv. Op. No. 2000-04 (a private tour company is prohibited from giving any additional compensation, either directly or through the district, to a school district employee who is accompanying students on a school-related trip as a part of his or her employment).³

For that reason, R.C. 2921.43(A)(1) prohibits the school district from using funds donated to the district by any source to compensate district employees for the performance of any duties related to sports or other school-related activities if the giver requires that the district use the funds for the purpose of compensating employees or positions.

Promising or Giving Compensation—R.C. 102.03(F)

R.C. 102.03(F) is also relevant to your question. R.C. 102.03(F) provides:

No person shall promise or give to a public official or employee 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.

Any school district official or employee, except any teacher whose position does not involve the performance of, or authority to perform, administrative or supervisory functions, is a public official or employee for purposes of R.C. 102.03(E). R.C. 102.01(B) and (C); Adv. Op. No. 2001-04. A "person" is any individual, corporation, partnership, association, or other similar entity. See R.C. 1.59. Compensation for services is within the definition of anything of value. R.C. 1.03, 102.01(G); Adv. Op. No. 96-004.

The Commission has explained that R.C. 102.03(F) would prohibit any person or entity that is doing or seeking to do business with, regulated by, or interested in matters before a public agency from promising or giving compensation for services to any official or employee of the agency. Adv. Op. No. 96-004. Because a booster group or school support organization is interested in matters before the district, it would be prohibited from promising or giving compensation to any official or employee of the district. The Commission has further explained that, if an official or employee can withdraw completely from matters that affect any source of compensation to him or

³ However, R.C. 2921.43 does not prohibit the district from acting to secure funds, from grant issuing organizations or other sources, provided that the district retains control to determine the use of the funds. For example, the law would not prohibit the district from applying for a grant with the intention of funding a particular employment position, provided that it is the district, rather than the grant issuer, that selects and directs the activities of the employee.

her, R.C. 102.03(F) does not prohibit the source from providing compensation to the official or employee.

In the situation you have described, it would be impossible for a person performing coaching or other support duties related to sports or other school-related activities to withdraw from matters affecting a booster club or other organization established to support the sports or other school-related activities. For that reason, R.C. 102.03(F) prohibits the organization from providing compensation for the performance of coaching duties to any person engaged in the performance of those duties. See also R.C. 102.03(D) and (E) (an employee of the district would be prohibited from using his or her position to secure, and from soliciting or accepting, such compensation from a booster club or other organization established to support the activities of the school district).

However, R.C. 102.03(F) would not prohibit an organization from making a voluntary gift or endowment to the school district, provided that the organization does not require that the district use the funds to provide compensation to employees or to fund positions. It must be clearly understood that, by making such a gift or endowment, the organization gains no control over the district's use of the gift or endowment, and no control over the establishment and funding of district positions, or the selection, hire, management, retention, or level of compensation of individuals serving in those positions.

School Districts Affected

The Ethics Commission was asked whether school district employees could accept compensation from sources other than the district for performing coaching duties. The restrictions discussed in this opinion apply to employees of all school districts in the state, including all city, local, exempted village, joint vocational, municipal, and cooperative education school districts and educational service centers. The conclusions also apply to all officials and employees of any community school operating pursuant to a contract as described in Section 3314.03 of the Revised Code.

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) Division (A)(1) of Section 2921.43 of the Revised Code prohibits a public servant from soliciting or accepting, and prohibits any person from promising or giving a public servant, except as allowed by law, any compensation: (a) to perform his or her official duties; (b) to perform any other act or service in his or her public capacity; (c) for the general performance of the duties of his or her public office or public employment; or (d) as a supplement to his or her public compensation; (2) R.C. 2921.43(A)(1) prohibits a school district employee who is compensated by the district to provide coaching or other services in connection with any school-related activity from also accepting payment for the same services from any other person,

including a booster group or other school support organization; (3) R.C. 2921.43(A)(1) prohibits any person, including a booster group or school support organization, from promising or giving compensation to a school district employee for coaching or other services provided by the employee in connection with any school-related activity; (4) The Ethics Law and related statutes do not prohibit any person, including a private organization that supports activities of the school, from making a voluntary gift or endowment to the district for use as the district chooses, subject to limitations in the Ethics Law discussed in this opinion; and (5) The conclusions in this opinion apply to officials and employees of all city, local, exempted village, joint vocational, municipal, and cooperative education school districts and educational service centers, and any community school operating pursuant to a contract as described in Section 3314.03 of the Revised Code.

A handwritten signature in black ink, reading "Ann Marie Tracey". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Ann Marie Tracey, Chair
Ohio Ethics Commission