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Auditor of State



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**Auditor of State's 2011
Community School Training**

Legal Update

Presented by:
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Agenda

- **Ethics Opinion**
- **New Case Law**
- **Common Findings for Recovery & Noncompliance Citations – How to Avoid**
- **Unauditable Designation & How to avoid**



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**Ohio Ethics Commission
Advisory Opinion No. 2010-01**

All members of the governing board, officers, employees of a community school are subject, without limitation, to:

- Chapter 102 of the Ohio Ethics Laws
- Ohio Rev. Code Sections 2921.42 and 2921.43 - (including all teachers)
- Added to Ohio Revised Code Section 3314.03 in March of 2007



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Ohio Ethics Commission Advisory Opinion No. 2010-01

- The OEC issued Opinion 2010-01. This Opinion overruled Opinion 2003-01 as it related to limits on the application of the Ethics Law and related statutes.
- So what does this mean?
 - Conflict of interest, nepotism, public contract restrictions, accepting gifts, etc.
- Consult legal counsel and OEC



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Richard Cordray, Ohio Attorney General vs. The International Preparatory School

- Is a community school treasurer a “public official”?
- If so, Ohio Revised Code 9.39 “strict liability” applies.
- *Supreme Court* decided this case on December 20, 2010
- Community School treasurer is public official



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Majority of Community Schools are in Compliance

- Most schools implement sound fiscal practices
- Those who are not in compliance generate the most attention, but are not typical
- Laws and regulations are aimed at schools that are out of compliance
- Compliance is important as it effects children, their parents, teachers and the community



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Findings for Recovery & Noncompliance Citations

- A **finding for recovery** will be issued where, during the course of an audit, it is found that public money has been illegally expended, has not been accounted for, is due but not collected, or that any public property has been misappropriated or converted.
- A **noncompliance citation** is a finding that school has not complied with some local, state or federal provision.



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Findings for Recovery Who is Liable?

- The individual directly responsible for the loss or misuse of public funds will be held liable.
- Generally, Ohio law holds certain other parties jointly and severally liable by virtue of holding certain positions:
 - Under Ohio law, any public official who either **authorizes** an illegal expenditure of public funds or **supervises the accounts** of a public office from which such illegal expenditures is made is liable for the amount of such expenditure. Seward v. National Surety Co., 120 Ohio St. 47 (1929); 1980 Op. Att'y Gen. No. 80-074; ORC 9.39; State ex rel. Vill. of Linndale v. Masten, 18 Ohio St. 3d 228 (1985)



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Findings for Recovery Who is Liable?

- So, who does this apply to?
- Who “authorizes” and/or “supervises the accounts” of the school?
 - Those who make the purchase
 - Those who sign checks
 - Those who approve expenditures/purchases
 - The Treasurer/Fiscal Officer – think about Cordray v. TIPS
 - Documentation and Transparency are paramount



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Common Findings for Recovery *Proper Public Purpose*

- Government entities may not make expenditures of public monies unless they are for a valid public purpose. State ex rel. McClure v. Hagerman, 155 Ohio St. 320 (1951).
- Typically, the determination of what constitutes a “proper public purpose” rests with the judgment of the governmental entity, unless such determination is arbitrary or unreasonable.
- Even if a purchase is reasonable, **Ohio Attorney General Opinion 82-006** indicates that it must be memorialized and must be approved BEFORE the purchase is made.
- Policies



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Common Findings for Recovery *Proper Public Purpose*

- AOS Technical Bulletins 2003-005 and 2004-002 discuss the requirements imposed by case law and AG Opinions.
- There are two criteria that the entity should consider when making a determination of proper public purpose:
 - (1) the expenditure is required for the general good of all inhabitants (students), meaning its objective is the promotion of public health, safety, morals, general welfare, security, prosperity, and contentment of all inhabitants, and
 - (2) the primary objective of the expenditure is to further a public purpose, even if an incidental private end is advanced



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Common Findings for Recovery *Proper Public Purpose & Documentation*

- Most findings for recovery are due to a lack of documentation
- An expenditure may be for a proper public purpose, but lack of documentation makes it impossible to determine what the purpose was
- Credit cards and lack of itemized receipts
- Sam's Club, Office Max, Target, Restaurants, Grocery Stores, and Gasoline – personal or private?
- Remember – transparency and documentation!



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Common Findings for Recovery
Proper Public Purpose & Documentation

- **Example:** During the audit period, purchases were made from the Academy's bank accounts for which supporting documentation was not on file and approval of the Governing Board could not be verified. The following transactions were unsupported:

- Food - \$1,500
- Gasoline - \$5,000
- Travel - \$12,000
- Fed Ex - \$1,100
- Retail - \$25,000
- Internet/Computer - \$5,200
- Cell Phone - \$9,200
- Utilities - \$1,700



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Common Findings for Recovery
Proper Public Purpose & Documentation

- **Example:** During the audit period cash withdrawals were made from the School's bank account for which supporting documentation was not on file and approval of the Governing Board could not be verified. A total of \$27,200 in ATM withdrawals and checks made payable to "cash" were unsupported.
- Think about who would be liable for this.
- How could documentation have changed the outcome?



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Common Findings for Recovery
Proper Public Purpose & Documentation

- **Example:** During the audit period payments were made to Bob Jones in the amount of \$9,257. No employment records could be located for Bob Jones, and the purpose of the payments was not clear. Additionally, no Governing Board approval could be located.
- Was Bob Jones a contractor or consultant?
- Again, documentation was essential.
- When re-creating fiscal records, it is often impossible to determine the purpose of an expenditure.



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Common Noncompliance & Referrals
Failure to Withhold STRS & SERS
Contributions

- Teaching and non-teaching employees are required to make the statutorily mandated contributions to STRS and SERS. (see Ohio Rev. Code Sections 3314.10, 3307.26, 3309.23)
- Employee and employer contributions are sometimes found to have been unpaid to the appropriate retirements system. This typically results in a referral to the respective entity.
- **Please note** – we no longer make findings for entities that also contribute to Social Security. Although it is the AOS position that this is not fiscally prudent and unnecessary due to the above-referenced law, the IRS has declined to rule on the matter. As such, we acknowledge that this is a management decision and accept an entity's decision to pay Social Security taxes as a precaution



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Common Noncompliance & Referrals
Failure to Withhold STRS & SERS
Contributions

- The OEC has held that community schools are subject to the Ohio's ethics laws. Remember earlier discussion
- Among other prohibitions, ORC §§ 102.03 and 2921.42 prohibit public officials from using their public offices to secure contracts, employment, etc. for themselves or relatives/certain associates. These are commonly referred to as "related party transactions."
- A finding that a school has likely violated a provision of the ethics law will result in a referral to the OEC.
- In one example, we saw that an executive director of a community school hired her young relative as an administrative assistant, and set their relative's compensation. The total compensation in this scenario totaled more than 5k during the school year. This resulted in a referral to the OEC.
- Another referral resulted from a governing board member voting to utilize her own company for a school project.



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Avoiding Findings & Citations
TRUST BUT VERIFY

- Sponsors can review the governing board's contracts and arrangements to ensure compliance and best practices.
- Governing board must monitor and verify companies and/or employees responsible for fiscal operations.
- Fiscal officers must assure compliance with board policies and accounting procedures.
- This is not a lack of trust – it is a system of checks and balances that help everyone win.



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Avoiding Findings & Citations

TRUST BUT VERIFY

- The Executive Director was responsible for many significant operational duties for the Academy during the year – including approving contracts, setting salary schedules, drafting and approving purchase requisitions and reimbursements (including her own), and entering into debt agreements.
- This lack of segregation of duties increases the risk that the Academy's funds could be misappropriated or fraudulent activity could occur and go undetected by management. Again, this is the exception – not the rule. However, this is a safeguard that helps keep public funds safe.
- In this type of situation, we'd recommend that the Board take a more active role. This would allow for segregation of duties which would, in turn, help the organization safeguard its assets. We would also recommend that all expenditures involving the salary of or reimbursement to the Executive Director be approved by the Board.



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Avoiding Findings & Citations

Board Approval of Expenditures/Policies

- A way to avoid findings/citations of this nature is for the governing board to adopt formal policies over authorization of expenditures and terms for reimbursements. Those expenditures and policies should be reviewed on a regular basis.
- These types of policies should identify those individuals responsible for reviewing and approving purchases of the entity. Those individuals with such authority should be independent of the purchases. The policy should also include a requirement that supporting documentation be provided, and should specify what documentation is required.
- Additionally, policies on reimbursements should require that prior approval be given to make a purchase for which reimbursement is sought.



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Avoiding Findings & Citations

Example Policy Provisions

- upon receipt of original itemized documentation, credit card expenditures will be paid through the Board of Director's bank account."
- "failure to submit an original itemized receipt for any purchase made on the Board credit card shall result in rejection of payment for any and all charges not properly documented."
- "the Board of Directors and the Fiscal Officer are responsible for the supervision, distribution, use and documentation of the credit card."



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Unauditable Designation

- This law requires the AOS to notify the school's sponsor and the ODE when a charter or community school fails to submit documents showing how tax dollars have been spent.
- If financial statements and records are not brought into an auditable condition, state payments to the school will stop.
- This law also prohibits a school's sponsor from opening any additional community schools while their finances are considered to be unauditable.
- Once the situation is corrected, payments to the school resume.
- The AOS declares a public office "unauditable" when officials fail to submit complete financial statements and other documentation needed to support an annual audit.



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Unauditable Designation

- If the AOS or a public accountant finds that a community school is unauditable, the AOS shall provide written notification of that declaration to the school, the school's sponsor, and the ODE.
- A sponsor that is notified by the AOS that a community school that it sponsors is unauditable shall not enter into contracts with any additional community schools until the records are brought into an auditable condition, and the AOS or a public accountant is able to complete a financial audit of that school.



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Unauditable Designation

Not later than 45 days after receiving notification by the Auditor of State that a community school is unauditable, **the sponsor of the school shall provide a written response to the Auditor of State.** The response shall include the following:

- (1) An overview of the process the sponsor will use to review and understand the circumstances that led to the community school becoming unauditable;
- (2) A plan for providing the Auditor of State with the documentation necessary to complete an audit of the community school and for ensuring that all financial documents are available in the future and
- (3) The actions the sponsor will take to ensure the plan is implemented.



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Unauditable Designation

- If a community school fails to make reasonable efforts and continuing progress to bring its accounts, records, files, or reports into an auditable condition within 90 days after being declared unauditable, the AOS shall notify the ODE of the school's failure.
- If the AOS or a public accountant subsequently is able to complete a financial audit of the school, the AOS shall notify the ODE that the audit has been complete.



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Unauditable Designation

- Upon notification by the AOS that a community school has failed to make reasonable efforts and continuing progress to bring its accounts, records, files, or reports into an auditable condition following a declaration that the school is unauditable, the ODE shall immediately cease all payments to the school under ORC Chapter 3314 and any other provision of law.
- Upon subsequent notification from the AOS under that division that either the AOS or a public accountant was able to complete a financial audit of the community school, the ODE shall release all funds withheld from the school under this section.



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Unauditable Designation

- AOS Technical Bulletin 2007-008 provides guidance
- How to avoid being "unauditable" – need to have the following:
 - An accurate/complete reconciliation of the school's bank and investment accounts to the school's book balance including supporting documentation (e.g., listing of outstanding checks, listing of deposits in transit, support for other adjustments, etc);
 - Approved minutes for all board meetings held during fiscal year;
 - Ledgers with all fiscal year activity posted
 - Supporting documentation (e.g., receipt detail, expense detail, payroll records, leases, capital assets, contract with employees and service providers, etc.); and
 - Financial statements including notes and management's discussion and analysis.



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**Fraud/Theft Red
Flags**

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Session Objectives

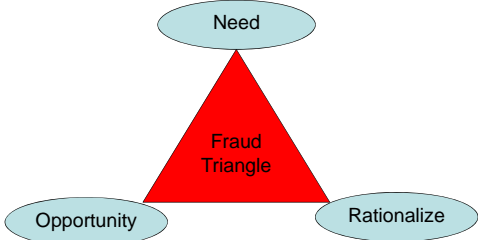
- Introduce the Fraud Triangle
- Identify common general and behavior-related red flags of fraud/theft
- Identify common fraud/theft red flags related to disbursements, receipts, payroll & credit/purchase/gas cards



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Cressey's Fraud Triangle




Need

Opportunity

Rationalize

Fraud Triangle



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General Red Flags

- Lifestyle - changes or beyond means
- Personal financial position – debt/credit issues
- Weak internal controls
 - Especially segregation of duties
- Entity financial difficulties in good times
- Excessive journal entries
 - Year-end or adjusting entries




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General Red Flags

- Unsupported transactions / journal entries / adjustments
- Unexpected overdrafts / declines in cash balances
- Photocopied or missing documents
- Altered documents / accounting records
- Make sense?
- Business & common sense



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Behavior-related Red Flags

- Personality changes (increased stress)
- Vices and addictions – use imagination
- Refuse time-off / promotions
- Nonresponsive & delaying tactics
- Excessive borrowing from co-workers
- Creditors @ the workplace



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Behavior-related Red Flags

- Annoyed by reasonable questions
- Provides unreasonable responses
- Bragging on purchases / lifestyle
- Large sums of cash
- Rewriting records for “neatness”



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Cycle Specific Red Flags

Risky Business

- Disbursement/procurement
- Sales / Receipts / Revenue
- Payroll disbursements
- Credit/Purchasing/Gas cards



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Disbursement / Procurement

- Handwritten vs. stamped endorsements
- Prepayment of goods / services
- Sole source providers
- Pressure to expedite payment
- Inordinate use of “manual” checks



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Disbursement / Procurement

- Lack of records / altered records
- Unapproved vendors
- New vendors & high volume
- Purchases outside the process
- Vendor has no physical address



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Disbursement / Procurement

- Vendor = employee name/address
- Personal payment delivery vs. mail
- Expenses/Supplies/Reimb. to employee
- Duplicate payments
- Handwritten/typed vs. computer generated documents



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Sales / Receipts / Revenue

- Excessive voids; discounts; returns
- Unauthorized voids; discounts; returns
- Unauthorized adjs. or write-offs
- Untimely deposits
- Customer complaints re: delinquencies



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Sales / Receipts / Revenue

- Deposits not = postings
- Untimely account reconciliations
- Increase in past due accounts
- No collection of past due or w/o accts.
- Cash payments when expect checks



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Payroll Disbursements

- Excessive overtime
- Unexpected overtime
 - Person; operational area; seasonal
- Unexpected increase/exceed budgeted costs
- More payments/amount than authorized
- Few or no deductions



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Credit/Purchase/Gas Cards

- Inappropriate charges on statements
- Little/no support documents
 - By design (policy) vs. intentional
- Unexplained increase in usage
 - Volume and/or amounts



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Credit/Purchase/Gas Cards

- Who, what, where & how many
 - Who – commensurate with job duties
 - What – stuff purchased
 - Where – location of card use
 - Store and geography
 - How many – reasonable quantity for needs



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Session Summary

- Introduced the Fraud Triangle
- Identified common general and behavior-related red flags of fraud/theft
- Identified common red flags specific to disbursements, receipts, payroll, and credit/purchase/gas cards



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THE OHIO ETHICS LAW OUTLINE

I. INTRODUCTION TO OHIO'S ETHICS LAW

A. **Purposes of the Ethics Law:**

- Protect the public from the financial, family, or business conflicts of its public servants
- Encourage impartiality in governmental decisions by restricting public actions on matters in which public officials and employees have direct and definite conflicts of interest
- Promote citizen confidence in the actions of public agencies

B. **Ethics Law History:**

- Created by the General Assembly in 1973
- Found in Ohio Revised Code Chapter 102 and R.C. 2921.42, 2921.421, and 2921.43
- Established the Ohio Ethics Commission, and two similar state ethics agencies in the Legislature and Judiciary, to oversee all within the three branches of government
- Ethics Commission is one of nearly 40 similar state ethics boards and commissions

C. **The Ethics Commission Oversees:**

- All state and local public officials and employees (except legislative and judicial members)
- Private parties and corporations who do business with public offices

D. **The Ethics Law:**

- Requires personal financial disclosure to identify and protect against conflicts;
- Restricts unethical conduct through laws that have criminal sanctions; and
- Allows uniform review and guidance regarding ethics issues.

II. THE OHIO ETHICS LAW – A WORKING UNDERSTANDING

General Rule: Whenever the interests of the public official or the public official's family or business associates are present in an issue before the public official, there is an ethics question.

A. **General Public Protections** – The Ethics Law contains *criminal* restrictions to:

- Restrict participation in public matters involving direct and definite personal, family and business interests of a public official or employee;
- Limit compensation for public duties to their public employer;
- Restrict personal, family, and business interests in public contracts;
- Prohibit nepotism in public hires and services;
- Condition former officials and employees' post-employment activity;
- Control the disclosure of confidential information, and;
- Provide protections against influence peddling in public agencies for personal benefit.

B. Conflict of Interest and Supplemental Compensation – R.C. 102.03(D), (E), (F), 2921.43

- **Core of Ethics Law restrictions that often appear together in analysis and violations. Ethics Law does not replace, but supplements, bribery and theft prohibitions. No quid pro quo required.**
1. **R.C. 102.03(D):**
 - a. Prohibits a public official's *active use of authority to secure* anything of value that could have a substantial and improper influence on the official. Includes voting, discussing, deliberating, or formally or informally lobbying on matters of conflict [OEC 2007-01].
 - b. Not necessary that thing of value is received by the official—could be received by family member or business associate.
 2. **R.C. 102.03(E):**
 - a. Prohibits a public official's *acceptance or solicitation* of anything of value that could have a substantial and improper influence on the official [OEC 2001-03]. A thing of substantial value from an improper source would have a substantial and improper influence.
 - b. Anything of value includes money, goods, *future employment*, interest in realty, and every other thing of value [R.C. 1.03].
 - c. Improper sources include parties doing or seeking to do business with, regulated by, or interested in matters before a public agency [OEC 2003-03].
 - d. Receipt or acceptance alone creates potential violation [OEC 2001-03].
 3. **R.C. 102.03(F):**
 - a. Prohibits a private party from *giving or promising* anything of value. [OEC 2008-01]
 - b. Prohibited regardless of whether official solicits the item.
 4. **Application to issues of:**
 - a. Employment: A public official is prohibited from soliciting, accepting, or using his position to seek employment from “improper” sources unless the official can withdraw from participating in any actions that affect the prospective employer and his abstention is approved by supervisors, where required. Official must withdraw from participation in official matters if attempting to secure, or approached about, employment [OEC 2008-02]
 - b. Travel, meals, and lodging: A public official cannot accept anything of value, including travel, meals, and lodging, from an improper source. [OEC 2001-03]
 - c. Gifts: Cannot accept gifts from any party that is doing or seeking to do business with, regulated by, or interested in matters before the public agency [OEC 2001-04].
 5. **Other Governance:**
 - a. Executive Order 2011-03K – State officials and employees under Governor
 - b. Other Agency Specific Restrictions – i.e. PUCO, public investment systems
 6. **R.C. 102.03(G):** Campaign Contributions not ordinarily governed under Ethics Law, unless another violation of law. [OEC 2002-03; see also R.C. 2921.43 below].
 7. **R.C. 102.01 (H)(1) – Honoraria:** Most public officials and employees who file financial disclosure are prohibited from receiving honoraria [OEC 99-003].
 8. **R.C. 2921.43 - Supplemental Compensation:**
 - a. Prohibits the acceptance or giving of any compensation, other than allowed by law, for the performance of any public duty or responsibility. Separate notion of conflict; attempt to prohibit the conflict inherent in being compensated by dual employers. Public and private sectors *both* subject to supplemental compensation prohibitions [OEC 2008-01]
 - b. Prohibits the coercion of a campaign contribution [State v. Conese (2004), 102 Ohio State 3d 435]
 9. **R.C. 102.03(C) - Licensing Conflicts:** Bars participation in license or rate-making where public official or immediate family members (spouse residing with official and any dependent children) own more than 5 percent.

C. Public Contract Restraints - R.C. 2921.42 and R.C. 102.04(B)

1. R.C. 2921.42: Five restrictions; The three most common are:

- a. Public officials cannot secure public contracts for himself, family member, or a business associate (includes hiring a family member into public employment) [OEC79-005; 98-004].
- b. Public officials cannot have an interest in profits or benefits of a public contract entered into by a public agency with which he is “connected” [OEC 2008-04].
- c. Public official cannot profit from a public contract he approved or that was authorized by a body of which he was a member unless the contract was competitively bid and awarded to the lowest and best bidder [OEC 88-008].

2. R.C. 2921.42(A)(2) - Investing Public Funds: Public officials cannot secure the investment of public funds in any share, bond, mortgage, or other security, if he, a member of his family, or any of his business associates either has an interest, is an underwriter, or receives any brokerage, origination, or servicing fees.

3. Public contract includes public purchases or acquisitions of any property or service, including employment, grants, or improvement or maintenance of public property [OEC 87-002; 89-006].

4. Exceptions:

- Stockholding below 5 percent; with an affidavit.
- Four-part exception—*All four must exist* and the burden is upon official to demonstrate:
 - Necessary supplies or services;
 - Unobtainable elsewhere for the same or lower cost or continuing course of dealing;
 - Equal or preferential treatment given agency; and
 - Arm’s length, full disclosure, no participation [OEC 2000-02].

5. R.C. 102.04(B): Restricts state employees from conducting business with any state agencies except through competitive bidding. (See F(5)(b) below for R.C. 102.04(D) exception) [OEC 2004-04].

D. Post-Employment and Representation Restrictions – R.C. 102.03(A), (B), and 102.04

1. R.C. 102.03(A)(1): Revolving door prohibitions on a public official, during public service and for one year afterwards, from representing anyone on any matter in which he personally participated while he was a public official [OEC 2004-04].

2. Statutory Definitions:

- a. Matter includes any case, proceeding, application, determination, issue, or question [OEC 99-001].
- b. Personal participation includes decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion, including supervision [OEC 91-009].
- c. Representation is formal or informal appearance before, or any written or oral communication with, *any* public agency [OEC 86-001].

3. Exceptions:

- Not prohibited from representing public agency the official formerly served.
- New matters and matters in which public official did not participate; prohibition is tied to personal participation.
- Ministerial functions - Not prohibited from performing functions like filing or amending tax returns, incorporation papers, and similar documents.
- Proposal, consideration, or enactment of statutes, rules [OEC2004-04].

4. R.C. 102.03(B) – Confidentiality: Lifetime prohibition on disclosure of confidential information both during and after leaving public position [OEC93-012].

5. R.C. 102.04(A) - Representation and Influence Peddling

- a. Prohibits state officials from receiving compensation directly or indirectly, other than from own public agency, for any service rendered personally on any case, application, or other matter before any public agency [OEC 93-010].

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Executive Director

THE OHIO ETHICS LAW AND OHIO ETHICS COMMISSION

Ohio's Ethics Law: The Ohio General Assembly created the Ohio Ethics Law and the Ohio Ethics Commission, as the administrator of the Ethics Law for most in public service, effective January 1, 1974. The Law can be found in R.C. Chapter 102 and related sections, R.C. 2921.42 and 2921.43.

The Ethics Law enacted new laws, since enhanced, that govern all public officials and employees by:

- Requiring personal Financial Disclosure to identify and protect against conflicting interests;
- Mandating legal restrictions on unethical conduct that have criminal sanctions;
- Establishing uniform review of ethics issues by statewide ethics commissions within each of the three branches of government.*

The Ethics Law also oversees and prohibits those in the private sector from giving improper compensation or substantial things of value to public officials and employees with whom they do business.

Protections to the Public: Ethics Laws promote the general public interest and support confidence by prohibiting biased public expenditures and decision-making conflicts of interest in public officials.

Among other restrictions, the Ethics Law generally prohibits every public official and employee from:

- Participating in their public role in any action that involves the direct interests of the official, or those of a family member, or another with whom the official has an ongoing private business relationship;
- Authorizing, or using a public position to secure, a public contract or the investment of public funds in any security that benefits the official, a family member, or a business associate;
- Improperly profiting from a public contract;
- Soliciting or accepting substantial and improper things of value, including, outside employment or consultation fees, gifts, or travel, meals and lodging, from those dealing with the public agency;
- Unauthorized disclosure or use of information deemed confidential by law;
- Representing others before any public agency in a matter in which the official or employee was involved, both during, and for a period of time (at least one year) after, leaving public service.

The Ohio Ethics Commission:

Ethics Commission members are citizens from throughout the state, with significant private and public sector experience, who are appointed by the Governor to 6-year, staggered terms, and subject to Senate confirmation:

- The Commission is a bipartisan state panel, required to have 3 Democratic and 3 Republican members; Commission members elect the Chairman and Vice-Chairman
- The Commission hires an Executive Director who administers a staff of 21, including attorneys, investigators, disclosure and education staff, to carry out 5 distinct state-wide statutory duties
- The Commission was created in 1974; Ohio is one of more than 40 states with a State Ethics Commission

Commission Members:

Merom Brachman, Bexley
Betty Davis, Vice Chair, Mason
Michael A. Flack, Columbus

Maryann B. Gall, Columbus
Ben Rose, Chair, Lima
vacant

By Law, the Ohio Ethics Commission Performs Five Statutory Duties:

Renders **Advice** and guides public officials to protect against personal, family and business conflicts:

- Issues written advisory opinions that provide legal immunity if advice is followed in future actions
- In 2009, closed 182 requests for advice and provided ethics guidance in response to 3,006 telephone calls from officials, agencies, counsel, and the general public
- Assists public entities and private businesses and non-profits in observing ethical decision-making in public processes through direct interaction and responses to questions
- Guides Financial Disclosure filers through questions involving disclosure and recognizing potential conflicts of interest

Provides **Education and Information** on Ethics Law prohibitions against conflicts of interest:

- Annually conducts educational and informational sessions
- In 2009, the Commission presented 195 separate sessions to more than 15,000 public and private sector attendees; conducts Ethics Education to all cabinet agency leadership
- Creates and distributes clear and concise informational materials on the Ethics Law
- Provides and updates a web site at www.ethics.ohio.gov that offers easy access to useful information and dynamic search capabilities

Administers **Financial Disclosure** for more than 11,000 annual filers from more than 1,300 different public entities:

- Receives disclosures from all state, county, and city elected officeholders and candidates and tracks timely compliance for the public prior to election
- Oversees these filings, and an additional 4,000 filed by state officials and board members, each year; a 25% increase in filings since 1994
- Reviews and makes available for public inspection the vast majority (80%) of statements
- Reviews all interests contained in confidential filings required of uncompensated board members and school officials (2,200 each year) to identify potential conflicts of interest
- Secures a 99% compliance rate in annual disclosure filings to assure uniform public disclosure

Conducts confidential **Investigation** into allegations of unethical activity and secures remedial response:

- Reviews an increasing number of allegations each year, now averaging almost 500, from prosecutors, auditors, agencies and the general public
- Prioritizes the most serious charges and complaints for confidential factual investigation and possible criminal prosecution; in 2009, processed 462 investigative requests and conducted 168 active investigations
- Conducts witness interviews, issues subpoenas, and works jointly with other law enforcement
- Recent examples of the Commission's efforts include criminal investigations relating to the Attorney General's Office and prosecutions of local and county officials
- Resolves less-serious, non-continuing questions of conduct through alternative dispute remedies

Assists the General Assembly in the consideration of ethics-related legislation:

- Am. Sub. H.B. 519 enhancing ethics oversight in the operation of casinos in Ohio
- S.B. 133 enacting reform in the public retirement systems
- H.B. 162 strengthening governance in Community Based Corrections Facilities
- S.B. 286 enabling public university faculty to participate in technology entrepreneurship, while protecting the public against personal and business conflicts of interest in using public resources
- S.B. 219 extending the statute of limitations for those offering improper compensation and gratuities

For more information about the Ethics Commission and its duties, searches of more than 300 formal Advisory Opinions, and common sense guidance regarding Ohio's Ethics Law, please go to www.ethics.ohio.gov, or contact the Ohio Ethics Commission at the number above.

(* The Ohio Ethics Commission is one of three state ethics agencies, within the three branches of government that oversee and administer the Ethics Law:

- The Joint Legislative Ethics Commission (JLEC) for members and employees of the General Assembly;
- The Board of Commissioners on Grievances and Discipline for judges and court employees, and;
- The Ethics Commission for the entire Executive branch and all other state and local public officials and employees.)

OHIO ETHICS COMMISSION

Merom Brachman
Commission Chair

David E. Freel
Executive Director



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INFORMATION SHEET: ADVISORY OPINION NO. 2001-04 **TRAVEL AND GIFTS PROVIDED TO SCHOOL OFFICIALS AND EMPLOYEES**

What is the question addressed in the opinion?

Do the Ohio Ethics Law and related statutes prohibit school district officials or employees from accepting travel, meals, and lodging, or gifts, provided to them in connection with their public employment?

What is the answer in the opinion?

The Ethics Law prohibits any school district official or employee, including any teacher regardless of his or her job duties, from accepting travel or any other gift, if the gift is given as payment for the performance of his or her official duties. All parties are prohibited from providing gifts or travel as compensation to school officials and employees.

School district officials and employees, including teachers with administrative or supervisory authority, are prohibited from accepting travel, meals, and lodging, or gifts of substantial value, from any party that is interested in matters before, regulated by, or doing or seeking to do business with their school districts. Teachers without administrative or supervisory authority are not subject to this prohibition. The Ethics Law also prohibits all parties that are interested in matters before, regulated by, or doing or seeking to do business with a school district from offering travel, meals, and lodging, or substantial gifts, to district officials and employees.

The Ethics Law does not prohibit school district officials and employees from accepting a promotional item, such as a t-shirt, pen, or calendar, or a gift of nominal value.

What are some examples of teachers who perform or have the authority to perform administrative or supervisory functions?

Academic department heads, athletic directors, and coaches are examples of teachers with administrative or supervisory authority.

How and when did the opinion become effective?

The opinion became effective upon acceptance by the Commission.

For More Information, Please Contact:

David E. Freel, Executive Director, **or**
Jennifer A. Hardin, Chief Advisory Attorney

**THIS SHEET IS PROVIDED FOR INFORMATION PURPOSES.
IT IS NOT AN ETHICS COMMISSION ADVISORY OPINION.
ADVISORY OPINION NO. 2001-04 IS ATTACHED.**

OHIO ETHICS COMMISSION

Merom Brachman
Commission Chair

David E. Freel
Executive Director



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Advisory Opinion
Number 2001-04
May 10, 2001

Syllabus by the Commission:

- (1) Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a school district official or employee from soliciting, accepting, or using his or her position to secure travel, meals, and lodging, or a gift of substantial value, from a party that is interested in matters before, regulated by, or doing or seeking to do business with the school district;
- (2) The prohibition in R.C. 102.03(D) and (E) applies to every school district and educational service center elected and appointed official, and to every employee of a school district or educational service center except a teacher, instructor, or other kind of educator whose position does not involve the performance of, or authority to perform, administrative or supervisory functions;
- (3) Division (F) of Section 102.03 of the Revised Code prohibits any person from promising or giving, to a school district official or employee, travel, meals, and lodging, or a gift of substantial value, if the person is interested in matters before, regulated by, or doing or seeking to do business with the public official's or employee's public agency;
- (4) Division (A) of Section 2921.43 of the Revised Code prohibits all elected and appointed school district officials and all school district employees, including all teachers, from accepting any gift, regardless of its value, and prohibits any person from giving a gift to a school official or employee, if either the purpose or the result of the gift is to provide payment to the public servant in return for the performance of his or her official duties.

* * * *

You have asked whether the Ohio Ethics Laws and related statutes prohibit school district officials or employees from accepting travel, meals, and lodging, or gifts, provided to them in connection with their public employment. You have explained that school district officials and employees, including administrators, teachers, and coaches, are sometimes offered gifts by students, parents, and vendors of the district.

You have identified two situations as examples. First, you have explained that a company wishes to provide construction services to the school district. The company would like to take two school district administrators to see an example of its work in another state. The company has offered to provide air travel, meals, and lodging for the administrators. Second, a vendor wishes to sell class rings, necklaces, and other jewelry to students in the district's high schools. The jewelry ranges in cost from \$100.00 to \$500.00 an item, depending on the item selected and the metal and stone used. You have stated that the vendor has offered to provide free items of jewelry to some of the school administrators and teachers as an expression of good will.

Brief Answer

As explained more fully below, the Ohio Ethics Law prohibits every school district official or employee, except a teacher, instructor, and other educator whose position does not involve the performance of, or authority to perform, administrative or supervisory functions, from soliciting, accepting, or using his or her position to secure travel, meals, and lodging, or a gift of substantial value, from any party that is interested in matters before, regulated by, or doing or seeking to do business with the school district he or she serves. Examples of teachers who perform, or have the authority to perform, administrative or supervisory functions include academic department heads, athletic directors, and coaches. The Ethics Law does not prohibit school district officials and employees from accepting a promotional item, such as a pen, pencil, or calendar, or a gift of nominal or de minimis value.

All school officials and employees, including teachers regardless of their job duties, are prohibited from accepting any gift, if either the purpose or the result of the gift is to provide payment to the public servant in return for the performance of his or her official duties. All persons are prohibited from providing, to a school employee, gifts that are provided to the official or employee as compensation in return for the performance of his or her official duties. The Ethics Law and related statutes also prohibit all persons, including students, parents, and school district vendors, from promising or giving, to any school district official or employee, any gift that is provided to the official or employee as compensation for the performance of his or her official duties.

Accepting Anything of Value

Your attention is directed to R.C. 102.03(D) and (E), which read:

- (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.

The term "public official or employee" is defined for purposes of R.C. 102.03 to include any person who is an employee of any public agency. See R.C. 102.01(B) and (C). The Commission has held that, with the exception of teachers, instructors, professors, or other kinds of educators whose positions do not involve the performance of, or authority to perform, administrative or supervisory functions, every official and employee of every school district in the state is considered a "public official or employee" as that phrase is defined in R.C. 102.01(B). See Ohio Ethics Commission Advisory Opinions No. 93-017 and 2000-04. Therefore, a school district administrator is a public official for purposes of R.C. 102.03(D) and (E).

Further, any teacher or other kind of educator whose position involves the performance of, or authority to perform, any duties that involve managing or directing the activities of the school district or other school employees, or supervising other school employees, is a "public official or employee" for purposes of R.C. 102.01(B). See Adv. Op. No. 93-017. Examples of teachers whose duties include administrative or supervisory activity include an educator who is the head of an academic department, and who establishes the curriculum, teaching activities, or other matters for the department, or an instructor who acts as an athletic coach or band director, and supervises the activities of assistants. Adv. Op. No. 2000-04. The question of whether a particular public school teacher is a public official or employee subject to R.C. 102.03(D) and (E) depends on the job duties of the employee involved.

The term "anything of value" is defined, for purposes of R.C. 102.03, to include money, goods and chattels, and every other thing of value. R.C. 1.03; 102.01(G). The Ethics Commission has held that promotional items, gifts, gratuities, and discounts, of the kind you have described, constitute things of value for purposes of R.C. 102.03. Adv. Ops. No. 82-005, 91-010, 92-015, and 95-001. Samples of items sold by a vendor, such as class rings, necklaces, and other jewelry, would also fall within the definition of anything of value.

Substantial and Improper Influence

The issue before the Commission is whether any one of these kinds of items, offered to a school official or employee, are of such a character as to manifest a "substantial" and "improper" influence upon that official or employee with respect to his or her duties. In Advisory Opinion No. 86-011, the Commission held that, when determining whether anything of value could have an improper influence upon a public official or employee with respect to the performance of his duties, the focus is primarily on the source of the thing of value. Id. The Commission held that the question of whether the gift could have a "substantial" influence depends on the nature of the thing of value. Id. Therefore, in the instant situation, the Commission must examine both the source and the nature of a gift offered to a public official or employee.

Source of Anything of Value

With regard to the source of the thing of value, the Commission has consistently held that anything of value could have an improper influence on a public official or employee if it is provided to the official or employee by a party that is interested in matters before, regulated by, or doing or seeking to do business with the public official's or employee's agency. See Adv. Ops. No. 84-010, 89-013, 90-001, and 95-001. The Commission explained in Advisory Opinion No. 84-010 that:

The receipt of something of value from a party that is interested in matters before, regulated by, or doing or seeking to do business with the agency with which the public official or employee serves is of such character as to manifest a substantial or improper influence upon the public official or employee with respect to his official duties, because it could impair his independence of judgment in the performance of his duties and affect subsequent decisions in matters involving the donor of the thing of value.

The Commission has consistently held that a public official or employee is prohibited from accepting a thing of value from any of these improper sources. See Adv. Ops. No. 86-011, 89-002, and 89-013. For example, in Advisory Opinion No. 2000-04, the Ethics Commission concluded that a school district official or employee is prohibited from receiving any benefit from a school trip company that does business with his school district.

In the instant situation, the gifts are being offered to school district officials and employees by students, parents, and vendors who are doing business with or wish to do business with the district. Students are subject to the decisions made by school district officials and employees, and are, therefore, in the category of regulated parties. Parents whose children attend classes in the school district are interested in matters pending before the school district. Vendors who sell or wish to sell goods or services to the school district are either parties that are doing or seeking to do business with the district. A vendor who wishes to sell items to students or parents, but needs the permission of the district before it can engage in the commercial activity, such as the vendor of class rings, necklaces, and other jewelry in your example, are parties that are interested in matters pending before the district. Therefore, the gifts that you have described in your question, offered by students, parents, and vendors seeking to do business with the district or with students and parents of students in the district, are being offered to the school officials and employees by improper sources.

Thus, the question becomes whether the offered items are "substantial," and thus prohibited things of value under R.C. 102.03. As discussed above, to determine whether a thing of value is "substantial," the Commission examines the nature of the thing of value.

Nature of Anything of Value

The Commission has held that anything of value could have a “substantial” influence upon a public official or employee, with respect to the performance of his duties, for purposes of R.C. 102.03(D) and (E), if the thing of value is of a “substantial” nature. Adv. Op. No. 86-011. The term “substantial” is not statutorily defined for purposes of the Ohio Ethics Law. In the absence of a statutory definition or a technical meaning, words and phrases used in a statute must be construed according to common usage. See R.C. 1.42. In Advisory Opinions No. 75-014 and 76-005, the Commission applied the common usage standard of R.C. 1.42 to the word “substantial” as used in R.C. 102.03 and determined that “substantial” was commonly used to mean “of or having substance, real, actual, true; not imaginary; of considerable worth or value; important.”

The Commission has generally found that some items are nominal or de minimis in value and will not have a substantial influence on a public official or employee. See, e.g., Adv. Ops. No. 86-003, 89-014, and 92-015. The Commission has found that a public official or employee is not prohibited from accepting a thing of value of a nominal or de minimis value from an improper source. For example, the Commission has stated that a public official or employee is not prohibited from soliciting or accepting a tee-shirt or other kind of nominal promotional item provided by a vendor or potential vendor. However, the Commission has cautioned that de minimis or nominal items or expenses could have a substantial cumulative value if extended over time. Adv. Op. No. 86-003. Further, the Commission has concluded that a public official’s or employee’s acceptance of even nominal things of value from certain parties could create the appearance of impropriety. Id.

The Commission has also identified some items that are clearly of a substantial value. In Advisory Opinion No. 2001-03, the Commission concluded that most golf outings are of a substantial nature. In Advisory Opinion No. 95-001, the Commission concluded that a season ticket for the games of a professional sports team is a substantial thing of value. Other items that the Commission has determined are substantial things of value are travel, meals, and lodging, discounts on furniture and major appliances, frequent flyer benefits accrued in connection with public travel, and a month of free parking or free gasoline, or a monthly public transit pass for commuters. Adv. Ops. No. 89-014, 91-010, 92-014, and 92-015.

The Commission has held that the application of R.C. 102.03 is dependent on the facts and circumstances of each individual situation. Adv. Ops. No. 87-008 and 89-003. The question, then, is whether the items you have described are of a substantial nature.

Travel, Meals, and Lodging

The first situation you have identified involves a company that wishes to provide construction services to the school district. The company would like to take two school district administrators to see an example of its work in another state. The company has offered to provide air travel, meals, and lodging for the administrators.

In past advisory opinions, the Commission has concluded that travel, meals, and lodging provided to public officials and employees are of a substantial value. Adv. Ops. No. 89-013, 89-014, and 2000-04. Based on this precedent, it is clear that the air travel, meals, and lodging offered by the construction vendor are items of substantial value. The fact that the travel is provided to the school officials in order to allow them to view examples of the vendor's work does not change its character as an item of substantial value.

Samples of Vendor Merchandise

The second example about which you ask involves samples of merchandise offered for sale by vendors, either to the school or to students and parents at the school. Specifically, you have stated that a vendor wishes to sell class rings, necklaces, and other jewelry to students in the district's high schools. In order for the vendor to sell these items to students, administrators for the district and at each school must enter into a contract with the vendor. The contract will set forth such items as the kinds and costs of class rings, necklaces, and other jewelry the vendor will sell, the methods and times at which the vendor may contact students, and permission for the vendor to use the school team name and mascot on the jewelry.

You have explained that the jewelry commonly ranges in cost from \$100.00 to \$500.00 an item, depending on the item selected and the metal and stone used. You have stated that the vendor has offered to provide free items of jewelry to some of the school administrators and teachers as an expression of good will.

As stated above, the Commission has identified such items as discounts, a golf outing, a parking or transit pass for one month, and season tickets to the games of a professional sports team as items of substantial value. Adv. Ops. No. 92-014, 92-015, 95-001, and 2001-03. Based on this precedent, it is clear that a class ring, necklace, or other jewelry item of this type, with a cost ranging from \$100.00 to \$500.00, is an item of substantial value. The fact that these items are provided to school administrators in the interest of promoting "good will" for the vendor does not change their character as items of substantial value.

Application of Prohibition

Therefore, Divisions (D) and (E) of Section 102.03 would prohibit a school official or employee from accepting, soliciting, or using the authority or influence of his public position to secure travel, meals, and lodging, or a gift of a substantial value, such as an item of jewelry, from a party that is interested in matters before, regulated by, or doing or seeking to do business with, the school district. Prohibited sources would include students, parents, and parties doing or seeking to do business with the district. As stated above, this prohibition applies to all elected and appointed school district officials, and to all school district employees, except teachers and other instructors who do not perform or have the authority to perform administrative or supervisory functions.

R.C. 102.03(D) and (E) do not prohibit a school district official or employee from accepting an offered promotional item, such as a pen, pencil, or calendar. Further, the Ethics Law and related statutes would not prohibit a school district official and employee from accepting a gift of nominal or de minimis value, such as a book or other typical gift a student might give his or her teacher at the holidays.

You should also note that R.C. 102.03(D) and (E) would not prohibit the school district from accepting the donation of sample merchandise, from the vendor, for the use of the district. For example, if the district were considering the purchase of computers for use in a high school computer lab, the district could accept the loan of a computer from any of the companies vying for the contract, in order for the district to determine which computer met the needs of the district in the most cost-effective fashion. See Adv. Op. No. 89-002. However, it must be clear that the computer is being used only for school district business, and is not provided to any school district official or employee for his or her personal use or benefit. Id.

Travel, meals, and lodging from construction vendors seeking business from the school district accrue to the personal benefit of the public official and employee who is undertaking the travel, even though they may also accomplish a business purpose. Adv. Op. No. 89-013 and 89-014. But see Adv. Op. No. 2000-04 (school district officials and employees are not prohibited from accepting, from a private tour company, necessary travel expenses to accompany students on a school trip, so long as the travel expenses are provided in connection with the contract between the district and the tour company). Gifts of class rings, necklaces, and other jewelry, as described above, are clearly for the personal use of the recipient, and do not serve any school district purpose.

Giving Anything of Value—R.C. 102.03(F)

You should also note R.C. 102.03(F), which 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.

The restriction in R.C. 102.03(F) applies to any party who is promising or giving a gift to a school district official and employee.

As explained above, a public official's or employee's acceptance of a gift of substantial value, from a party that is interested in matters before, regulated by, or doing or seeking to do business with the public official's or employee's public agency, could be of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to his or her duties. Therefore, R.C. 102.03(F) prohibits any party that is interested in matters before, regulated by, or doing or seeking to do business with the public official's or employee's public agency from providing travel, meals, and lodging, or a gift of substantial value, to a public official or employee.

Supplemental Compensation—R.C. 2921.43(A)

The question presented in this opinion may also raise issues involving supplemental compensation, and thus implicate the prohibitions of Section 2921.43(A), which provide:

- (A) No public servant shall knowingly solicit or accept and no person shall knowingly promise or give to a public servant either of the following:
 - (1) Any compensation, other than as allowed by divisions (G), (H), and (I) of section 102.03 of the Revised Code or other provisions of law, to perform his 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 his official duties.

The term "public servant" is defined, for purposes of this section, to include any public official; any person performing ad hoc a governmental function, including, but not limited to, a juror, member of a temporary commission, master, arbitrator, advisor, or consultant; and a person who is a candidate for public office, whether or not the person is elected or appointed to the office for which the person is a candidate. R.C. 2921.01(A). A public school administrator, official, or employee, including any teacher, regardless of his or her duties and responsibilities, is a "public servant" as defined by R.C. 2921.01(B), and, as such, is subject to the prohibition of R.C. 2921.43(A)(1). See Adv. Op. No. 93-017.

R.C. 2921.43(A)(1) prohibits a public servant from accepting any compensation, other than as allowed by R.C. 102.03(G)-(I) or other provision of law, to perform any act in his public capacity or generally perform the duties of his public position. See Adv. Op. No. 90-001. R.C. 2921.43(A)(1) also prohibits any person from promising or giving to a public servant any such outside compensation. Adv. Ops. No. 89-014 and 90-001. The exceptions set forth in R.C. 102.03(G) through (I) concern campaign contributions, and under certain circumstances, honoraria and travel, meal, and lodging expenses incurred in connection with a personal appearance or speech, or attendance at conferences, seminars, and similar events, and are not applicable in the instant situation.

The word "compensation" is not defined for purposes of R.C. 2921.43. In Advisory Opinion No. 92-014, the Ethics Commission held:

A primary rule of statutory construction is that words used in a statute must be construed according to rules of grammar and common usage. See R.C. 1.42. Furthermore, statutes "must be construed in the light of the mischief they are

designed to combat." City of Mentor v. Giordano, 9 Ohio St. 2d 140, 144 (1967). "Compensation" is defined as "payment for services: esp., wages or remuneration." See Webster's New World Dictionary 289 (2nd College Ed. 1972).

See also State v. Livesay, 91 Ohio Misc. 2d 208 (C.P. Jackson Cty. February 19, 1998) (the use of the word "compensation" in R.C. 2921.43(A) requires an exchange of a thing in return for some obligation).

R.C. 2921.43(A) prohibits a public servant from accepting any item, and any person from promising or giving a public servant any item, including a gift of substantial value, that is intended to be provided in exchange for the performance of the public servant's public duties. For example, a substantial gift such as a class ring or other jewelry that a vendor provides to any school district official or employee in return for the performance of a particular duty, act, or service that the school district official or employee is required to perform, or for the general performance of the duties of the school district official or employee, is consideration in the form of jewelry given to a school official or employee for performing his or her public duties. Adv. Op. No. 2001-03. See also State v. Capko, No. 56814, 1990 Ohio App. LEXIS 1287, at *5 (Cuyahoga County 1990) (quoting State v. Beros, No. CA-633 (Guernsey County 1981) (the bribery statute [R.C. 2921.02(B)] 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').

Other Considerations

Your question may also raise issues concerning school district rules or policies that govern the officials and employees of those districts, and that are independent of the Ohio Ethics Law and related statutes. A public agency cannot, by rule or policy, impose a lesser standard of behavior on public officials and employees than that imposed by the Ohio Ethics Law. See Adv. Op. No. 83-004 (the Ohio Ethics Law and related statutes are general laws establishing a standard of conduct for all citizens who serve as public officials or employees, and will prevail over city charter provisions). However, a public agency may be able to adopt rules and policies that impose a broader prohibition than those contained within the Ohio Ethics Law. These rules and policies are not within the Ethics Commission's jurisdiction. Therefore, each school district official or employee may wish to seek advice from the specific school district he or she serves regarding the existence of any rule or policy that governs the issues presented in this opinion.

Conclusion

As explained more fully above, the Ohio Ethics Law prohibits every school district official or employee, except a teacher, instructor, and other educator whose position does not involve the performance of, or authority to perform, administrative or supervisory functions, from soliciting, accepting, or using his or her position to secure travel, meals, and lodging, or a gift of substantial value, from any party that is interested in matters before, regulated by, or

doing or seeking to do business with the school district he or she serves. Examples of teachers who perform, or have the authority to perform, administrative or supervisory functions include academic department heads, athletic directors, and coaches. The Ethics Law does not prohibit school district officials and employees from accepting a promotional item, such as a pen, pencil, or calendar, or a gift of nominal or de minimis value.

All school officials and employees, including teachers regardless of their job duties, are prohibited from accepting any gift, if either the purpose or the result of the gift is to provide payment to the public servant in return for the performance of his or her official duties. All persons are prohibited from providing, to a school employee, gifts that are provided to the official or employee as compensation in return for the performance of his or her official duties. The Ethics Law and related statutes also prohibit all persons, including students, parents, and school district vendors, from promising or giving, to any school district official or employee, any gift that is provided to the official or employee as compensation for the performance of his or her official duties.

This advisory opinion is based on the facts presented. It is limited to questions arising under Chapter 102. and Sections 2921.42, 2921.421, 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) Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a school district official or employee from soliciting, accepting, or using his or her position to secure travel, meals, and lodging, or a gift of substantial value, from a party that is interested in matters before, regulated by, or doing or seeking to do business with the school district; (2) The prohibition in R.C. 102.03(D) and (E) applies to every school district and educational service center elected and appointed official, and to every employee of a school district or educational service center except a teacher, instructor, or other kind of educator whose position does not involve the performance of, or authority to perform, administrative or supervisory functions; (3) Division (F) of Section 102.03 of the Revised Code prohibits any person from promising or giving, to a school district official or employee, travel, meals, and lodging, or a gift of substantial value, if the person is interested in matters before, regulated by, or doing or seeking to do business with the public official's or employee's public agency; and (4) Division (A) of Section 2921.43 of the Revised Code prohibits all elected and appointed school district officials and all school district employees, including all teachers, from accepting any gift, regardless of its value, and prohibits any person from giving a gift to a school official or employee, if either the purpose or the result of the gift is to provide payment to the public servant in return for the performance of his or her official duties.



Merom Brachman, Chair
Ohio Ethics Commission

OHIO ETHICS COMMISSION

Dr. Herb Asher, *Chair*
Merom Brachman, *Vice Chair*



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David E. Freel, *Executive Director*

INFORMATION SHEET: ADVISORY OPINION NO. 2003-01 **COMMUNITY SCHOOLS**

What is the question addressed in the opinion?

Are members of the governing board of a community school subject to the Ohio Ethics Law and related statutes?

What is the answer in the opinion?

Yes. All governing boards of community schools are required to sign contracts with the school districts that sponsor them, in which the community schools agree to be bound by the revolving door, confidentially, conflict of interest, and representation provisions of the Ethics Law. Further, members of the governing board of a community school are “agents” of the state and, therefore, subject to the public contract law and the supplemental compensation law.

While the Ethics Law does apply to members of a community school governing board, the General Assembly provided a specific exception from the law that allows a member of the board of a community school to become an employee of the school and to sell goods or some services to the school. The exception does not allow members of community school governing boards to participate in board decisions to award contracts, including employment contracts, for themselves, their family members, or their business associates.

What prompted the question?

The Commission considered this question in response to a number of questions that followed recent changes to the laws that govern the operation of community schools.

When will the conclusions of the opinion become effective?

The opinion became effective upon acceptance by the Commission.

For More Information, Please Contact:

David E. Freel, Executive Director, **or**
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**THIS SHEET IS PROVIDED FOR INFORMATION PURPOSES.
IT IS NOT AN ETHICS COMMISSION ADVISORY OPINION.
ADVISORY OPINION NO. 2003-01 IS ATTACHED.**

OHIO ETHICS COMMISSION

Dr. Herb Asher, *Chair*
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David E. Freel, *Executive Director*

Advisory Opinion
Number 2003-01
October 17, 2003

Syllabus by the Commission:

- (1) All members of the governing board of a community school are subject to the provisions of the Ohio Ethics Law and related statutes, as set forth in R.C. Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code, except as set forth in Division (A)(11)(e) of Section 3314.03 of the Revised Code;
- (2) This conclusion also applies to all officers and employees of a community school, excluding teachers and other educators who have no authority to perform supervisory or administrative functions;
- (3) Teachers and other educators employed by a community school, whose job duties do not include the authority to perform supervisory or administrative functions, are subject to the restrictions set forth in Sections 102.04, 2921.42, and 2921.43 of the Revised Code, but are not subject to the restrictions set forth in Section 102.03 of the Revised Code.

* * *

You have asked whether the members of the governing board of a community school are subject to the Ohio Ethics Law and related statutes.

Brief Answer

As explained more fully below, members of the governing board of a community school are bound by the provisions of R.C. Chapter 102. pursuant to the terms of the contract between the community school and the sponsor district. Further, members of the governing board of a community school are “agents” of the state and, therefore, “public officials” subject to the provisions of R.C. 2921.42 (the public contract law) and R.C. 2921.43 (the supplemental compensation law).

Because of the specific exception enacted by the General Assembly in R.C. 3314.03(A)(11)(e), however, a member of the board of a community school may become an employee of the school and may sell goods or some services to the community school. However, R.C. 102.03(D) and 2921.42(A)(1) prohibit a member of the board of a community school from participating, in any manner as a board member, in board actions to approve, or alter the terms and conditions of, any kind of contract in which he, a family member, or a business associate, has an interest, including an employment contract.

Community Schools

Community schools are established pursuant to Ohio Revised Code 3314.01:

- (A)(1) A board of education may permit all or part of any of the schools under its control, upon request of a proposing person or group and provided the person or group meets the requirements of this chapter, to become a community school.
- (2) Any person or group of individuals may propose the creation of a community school pursuant to the provisions of this chapter. . . .
- (B) A community school created under this chapter is a public school, independent of any school district, and is part of the state's program of education. A community school may sue and be sued, acquire facilities as needed, contract for any services necessary for the operation of the school, and enter into contracts with a sponsor pursuant to this chapter. The governing authority of a community school may carry out any act and ensure the performance of any function that is in compliance with the Ohio Constitution, this chapter, other statutes applicable to community schools, and the contract entered into under this chapter establishing the school.

A community school is organized as a nonprofit corporation, under the Ohio Nonprofit Corporation Act.

In order to operate a community school, the governing authority of the community school must enter into a contract with the school district that will sponsor the district. R.C. 3314.03. R.C. 3314.01(B) provides that the governing board of a community school must ensure the performance of any function that is in compliance with “the contract entered into under this chapter establishing the school.”

R.C. 3313.04 sets forth the terms of the contract. R.C. 3313.04(A)(11) provides that the contract shall specify that the school will comply with a number of requirements, including the requirement set forth in Division (A)(11)(e):

The school shall comply with Chapter 102. of the Revised Code except that nothing in that chapter shall prohibit a member of the school's governing board from also being an employee of the school and nothing in that chapter or section 2921.42 of the Revised Code shall prohibit a member of the school's governing board from having an interest in a contract into which the governing board enters that is not a contract with a for-profit firm for the operation or management of a school under the auspices of the governing authority. (Emphasis added.)

The Ethics Law—R.C. Chapter 102.

Chapter 102. of the Revised Code establishes the Ethics Commission and defines its authority and duties. The Commission has investigative and advisory jurisdiction over Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code. R.C. 102.06 and 102.08. Generally, the Ohio Ethics Law and related statutes prohibit public officials and employees from using their official positions for their own personal benefit, for the benefit of their family members or business associates, or where there is otherwise a conflict of interest.

R.C. 102.01(B) defines the term “public official or employee” for purposes of Chapter 102. of the Revised Code as “any person who is elected or appointed to an office or is an employee of any public agency.” R.C. 102.01(C) defines the term “public agency” as:

[T]he general assembly, all courts, any department, division, institution, board, commission, authority, bureau or other instrumentality of the state, a county, city, village, township, and the five state retirement systems, or any other governmental entity. “Public agency” does not include a department, division, institution, board, commission, authority, or other instrumentality of the state or a county, municipal corporation, township, or other governmental entity that functions exclusively for cultural, educational, historical, humanitarian, advisory, or research purposes; does not expend more than ten thousand dollars per calendar year, excluding salaries and wages of employees; and whose members are uncompensated.

As stated above, a community school is organized as a nonprofit corporation. The prohibitions in Chapter 102. generally do not apply to persons serving on the board of a corporation. See Ohio Ethics Commission Advisory Opinions No. 75-013 and 75-019.¹

In this instance, a community school is not a “public agency” as that term is defined in R.C. 102.01(C) and the members of the governing board of a community school would not normally be subject to the Ohio Ethics Law. However, the General Assembly, presumably contemplating the function a community school performs on behalf of the public, mandated that community schools agree to “comply with Chapter 102. of the Revised Code” when they enter into a contract with a sponsor school. See R.C. 3314.03(A)(11)(e) (set forth above).

¹ There may be some instances where the officers and employees of a corporation are subject to the Ethics Law and related statutes because of the nature and authority of the corporation on behalf of a public agency. See Adv. Op. No. 78-004 (a corporation designated to serve as the “engineer” for a city is subject to R.C. Chapter 102. and 2921.42).

Thus, a member of the governing board of a community school is subject to the restrictions imposed upon “public officials and employees” by R.C. Chapter 102. By requiring that the “school” shall comply with Chapter 102., the General Assembly has expressed, in unambiguous terms, its intent to require officers and employees of community schools to comply with the requirements of the Ethics Law.

The Public Contract Law—R.C. 2921.42

R.C. 2921.01(A) and (B) include definitions that determine whether an individual is subject to the prohibitions imposed by Sections 2921.42 and 2921.43 of the Revised Code. R.C. 2921.01(A) defines the term “public official” for purposes of R.C. Chapter 2921. as:

[A]ny elected or appointed officer, or employee, or agent of the state or any political subdivision thereof, whether in a temporary or permanent capacity, and including without limitation legislators, judges and law enforcement officers. (Emphasis added.)

A nonprofit corporation is not a political subdivision of the state. Accordingly, a member of the governing board of a community school is neither an officer nor an employee of a political subdivision or the state.

Agents of the State

R.C. 2921.01 includes “agents of the state,” as well as officers and employees, within the definition of “public official” for purposes of R.C. 2921.42. Because the word “agent” is not statutorily defined for purposes of R.C. 2921.42, the Ethics Commission has applied the definition of the word “agent” that has been used in judicial decisions:

A person is an “agent of the state,” and thus, a “public official” as defined in Division (A) of Section 2921.01 of the Revised Code, when: (a) the person has the power to act on behalf of and bind the state by his actions; (b) the state has the right to control the actions of the person; and (c) the actions of the person are directed toward the attainment of an objective sought by the state.

Adv. Op. No. 92-001.

The statutes governing the establishment of community schools are set forth in R.C. Chapter 3314. A community school is considered “ a public school . . . and is part of the state’s program of education.” R.C. 3314.01(B). The governing authority of a community school is statutorily authorized to “carry out any act and ensure the performance of any function that is in compliance with the Ohio Constitution, [Chapter 3314.], other statutes applicable to community schools, and the contract entered into under this chapter establishing the school.” *Id.* A community school is created by a contractual agreement between the governing authority and a sponsoring public agency. R.C. 3314.03. The governing board of a community school must submit an annual report

of its activities and progress, and its financial status, to the public agency that sponsors it and the legislative office of education oversight. R.C. 3314.03(A)(11)(g).

A community school receives funds for the performance of its duties from the state department of education through a statutorily devised formula. R.C. 3314.08(D). For purposes of receiving grants from any state or federal agency, a community school is considered a school district and its governing board is considered a board of education. R.C. 3314.08(E). A community school must maintain its financial records in the same manner as a public school districts. R.C. 3314.03(A)(8). In addition, the Auditor of State is required to audit community schools. Id.

Therefore, by enacting R.C. Chapter 3314., the General Assembly has empowered a community school to act on behalf of and bind the state with regard to education. It is apparent that the state exercises control over a community school's operations in a number of ways such as fiscal oversight and the requirement for annual reports. The community school is directed towards the attainment of a state objective—providing educational opportunities and choices for Ohio school children and parents.

A member of the governing board of a community school is an “agent of the state” for purposes of R.C. 2921.01, and is subject to the public contract restrictions in R.C. 2921.42. Because they are “public officials,” members of the governing board of a community school are also subject to the restrictions imposed by R.C. 2921.43, which prohibits a public official from accepting compensation for the performance of his public duties from anyone other than the public agency he serves.

Exceptions Provided by R.C. 3314.03(A)(11)(e)

R.C. 3314.03(A)(11)(e) provides exceptions to the Ethics Law and related statutes to permit a member of the school's governing board to be an employee of the school and to have an interest in a contract with the governing board. Because of this exception, a member of the school's governing board may also be employed by the school without violating R.C. 102.03(D) and (E) by serving in both capacities.

However, because the language of the exception in R.C. 3314.03(A)(11)(e) is specific and limited, a member of a community school's governing board is subject to all other prohibitions imposed by R.C. Chapter 102., including other prohibitions imposed by R.C. 102.03(D) and (E), which read:

- (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.

R.C. 102.03(D) prohibits a board member from using the authority or influence of his position to secure his own employment with the community school. Adv. Ops. No. 87-008 and 88-004. See R.C. 1.03(H) (a promise of future employment is a thing of value for purposes of R.C. 102.03). R.C. 102.03(D) also prohibits a board member who is also employed by the community school from participating, as a board member, in matters that result in a definite and direct benefit for him, such as renewal of his contract, approval of his performance evaluations, and pay increases. See also Att'y Gen. Op. No. 79-086 (addressing the well-established principle of common law that an appointing authority may not appoint himself to an appointive position). R.C. 102.03(E) prohibits a board member from impropriety soliciting any definite and direct benefit for himself.

R.C. 3314.03(A)(11)(e) also provides an exception from some of the public contract prohibitions in R.C. 2921.42. Two of the prohibitions are found in Divisions (A)(3) and (A)(4) of R.C. 2921.42, which provide that no public official shall knowingly:

- (3) During his term of office, or within one year thereafter, occupy any position of profit in the prosecution of a public contract authorized by him or by a legislative body, commission, or board of which he was a member at the time of authorization, unless the contract was let by competitive bidding to the lowest and best bidder;
- (4) 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 he is connected.

R.C. 2921.42(A)(4) prohibits public officials from having an interest in the profits or benefits of a public contract entered into by or for the use of the governmental agency with which they are connected. Adv. Op. No. 89-008. An interest that is prohibited under R.C. 2921.42(A)(4) must be definite and direct and may be either pecuniary or fiduciary. Adv. Ops. No. 78-005 and 81-003. R.C. 2921.42(G)(1)(a) defines the term "public contract" as the purchase or acquisition, or a contract for the purchase or acquisition of property or services, including a contract for public employment, by or for the use of a political subdivision or any of its agencies or instrumentalities.

Generally, then, R.C. 2921.42(A)(4) would prohibit a member of the governing board of a community school from being employed by, or selling goods or services to, the community school for the use of the sponsoring public agency. Because R.C. 3314.03(A)(11)(e) provides an exception to the prohibition contained in R.C. 2921.42(A)(4), however, a member of a community school's governing board is not prohibited from having a definite and direct interest in the sale of goods or services to the school, excluding a contract with a for-profit firm for the management or operation of the school.

With respect to R.C. 2921.42(A)(3), the prohibition is not against a public official having an “interest” in a public contract. Rather, R.C. 2921.42(A)(3) prohibits a public official from occupying a position of profit in a public contract. In Advisory Opinion No. 92-013, the Ethics Commission held that the General Assembly’s use of the words “occupy any position of profit” in Division (A)(3) characterizes a different type of activity on the part of a public official than having “an interest in the profits or benefits of a public contract,” for purposes of Divisions (A)(1) and (4). Adv. Op. No. 92-013. During his service on the board, or within one year thereafter, a member of a community school’s governing board is prohibited from occupying a “position of profit” in the prosecution of a public contract authorized by him, or by the governing board, unless the contract was let by competitive bidding to the lowest and best bidder.

Application of Exception

However, in R.C. 3314.03(A)(11)(e), the General Assembly specifically stated:

[N]othing in [Chapter 102.] or section 2921.42 of the Revised Code shall prohibit a member of the school's governing board from having an interest in a contract into which the governing board enters that is not a contract with a for-profit firm for the operation or management of a school under the auspices of the governing authority.

By this language, the General Assembly has demonstrated its clear intention that, with the exception of contracts with a for-profit firm for the operation or management of a school, there should be no prohibition against members of the governing board of a community school being employed or entering into contracts with the community school. It is apparent that the General Assembly has weighed the relative merits of imposing the Ethics Law and related statutes in their entirety, and decided, instead, to craft a narrow statute to permit employment and contracts.

It would be contrary to the General Assembly's explicitly stated intention for the Ethics Commission to conclude that R.C. 2921.42(A)(3) effectively prohibits employment contracts, because those contracts are not competitively bid, where the exception in R.C. 3314.03(A)(11)(e) appears intended to specifically allow such employment. Further, with respect to other contracts, it would be a logical inconsistency to assume that the General Assembly excepted the members of governing boards of community schools from the provisions of R.C. 2921.42(A)(4), but not R.C. 2921.42(A)(3), when the restrictions, in this situation, would preclude essentially the same activity.

Therefore, the Commission concludes that the exception in R.C. 3314.03(A)(11)(e) extends to the restrictions in both R.C. 2921.42(A)(3) and (A)(4). As a result, except as provided in R.C. 3314.03(A)(11)(e), the members of the governing boards of community schools are not prohibited from being employed by, or having other contracts with, the community schools they serve.

However, R.C. 3314.03(A)(11)(e) does not provide an exception to all of the prohibitions imposed by other sections of R.C. 2921.42.

Authorizing a Public Contract—R.C. 2921.42(A)(1)

Division (A)(1) of R.C. 2921.42 prohibits a public official from authorizing, or using the authority or influence of his office, to secure a public contract in which he, a family member, or a business associate has an interest. A person who is employed by, or sells goods or services to, a community school, has an interest in a public contract for the use of the public agency that sponsors the community school. The exception in R.C. 3314.03(A)(11)(e) does not suggest that the General Assembly intended to allow, members of the governing boards of community schools to award employment or other contracts to themselves, their family members, or their business associates.

Therefore, R.C. 2921.42(A)(1) prohibits a member of a community school's governing board from authorizing a contract for himself, and from participating as a board member in matters that affect a contract in which he has an interest. See also R.C. 102.03(D) (discussed above). Further, notwithstanding the stated statutory exception, R.C. 2921.42(A)(1) and R.C. 102.03(D) also prohibit a member of a community school's governing board from authorizing, or using the authority or influence of his position on the governing board to secure, either the authorization of a public contract or anything of value for a family member or business associate.

Other Officers and Employees of Community Schools

Although your question pertains to members of a community school's governing board, the mandate in R.C. 3314.03(A)(11)(e) that "[t]he school shall comply with Chapter 102. of the Revised Code" would impose the restrictions of the Ohio Ethics Law and related statutes upon all school officers and employees. Therefore, the community school superintendent, treasurer, and other officers and employees are subject to the restrictions in R.C. Chapter 102. and Sections 2921.42 and 2921.43. This would include all employees, regardless of their job duties, except teachers and other educators.

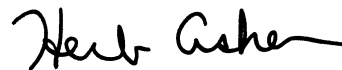
Teachers and other educators employed by community schools, whose job duties do not include the authority to perform supervisory or administrative functions, are specifically excepted from the restrictions in R.C. 102.03, which include the revolving door, conflict of interest, and confidentiality laws. However, teachers and other educators are subject to the restrictions set forth in R.C. 102.04 (which prohibits representation of clients before the agency served), R.C. 2921.42 (discussed above), and 2921.43 (which prohibits supplemental compensation). See Adv. Op. No. 93-017.

Summary

As explained above, members of the governing board of a community school are bound by the provisions of R.C. Chapter 102. pursuant to the terms of the contract between the community school and the sponsor district. Further, members of the governing board of a community school are "agents" of the state and, therefore, "public officials" subject to the provisions of R.C. 2921.42 (the public contract law) and R.C. 2921.43 (the supplemental compensation law).

Because of the specific exception enacted by the General Assembly in R.C. 3314.03(A)(11)(e), however, the Commission concludes that a member of the board of a community school may become an employee of the school and may sell goods or some services to the community school. However, R.C. 102.03(D) and 2921.42(A)(1) prohibit a member of the board of a community school from participating, in any manner as a board member, in board actions to approve, or alter the terms and conditions of, any kind of contract in which he, a family member, or a business associate, has an interest, including an employment contract.

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) All members of the governing board of a community school are subject to the provisions of the Ohio Ethics Law and related statutes, as set forth in R.C. Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code, except as set forth in Division (A)(11)(e) of Section 3314.03 of the Revised Code; (2) This conclusion also applies to all officers and employees of a community school, excluding teachers and other educators who have no authority to perform supervisory or administrative functions; and (3) Teachers and other educators employed by a community school, whose job duties do not include the authority to perform supervisory or administrative functions, are subject to the restrictions set forth in Sections 102.04, 2921.42, and 2921.43 of the Revised Code, but are not subject to the restrictions set forth in Section 102.03 of the Revised Code.



Dr. Herb Asher, Chairman
Ohio Ethics Commission

Community School Closing Procedures

The sponsor assures the GA takes the required actions to properly address closing issues and/or to take those actions itself if the governing authority is no longer able or functioning.



The sponsor and GA are responsible for wrapping up the closing of the school.

A school is officially closed when instruction is no longer taking place and the governing authority or sponsor issues an official notice which states the date of the school's closure.



Sponsors required to secure records

FTE Review and Final Audit scheduled within 30 days.



Notify parents the school is closing through a formal letter. The letter to include but not limited to:

- The reason for the closing of the school,
- Options for enrolling in another community school, traditional schools or nonpublic schools and
- Contact information.



Notify STRS and PERS



Sponsor to take control and secure all records, property and assets.



Student records shall be put into order and transcript materials produced immediately



A final FTE review shall be conducted within 30 days of notification of the closure of a community school while student records are on site at the closed school and original student records shall be retained for the final state audit;



Copies of student records shall be provided by the school's Chief Administrative Officer to all resident districts within 7 business days



Special education records shall be provided directly to receiving school special education administrators



In concert with the governing authority, notify the school's staff of the decision to close the school:

- Provide a clear written timeline of the closing process;
- Ensure that STRS and SERS contributions are current;
- Clarify COBRA benefits and when medical benefits end;
- Remind the faculty of their obligation to teach up to the date of closing or otherwise determine that the school is properly staffed up to the time of closing;
- Ensure that each faculty's LPDC information is current and available to the teachers;
- Provide sponsor contact person information to all staff.



4
Sections

**I. Initial Notifications,
Student & School Records**

II. Disposition of Assets

**III. Preparation of Itemized
Financials**

**IV. Final Payments and
Adjustments**



Disposition of Assets

- Either the GA or the Sponsor Appoints an Overseer of Financial Records
- Keep State & Federal Assets Separate



Review the financial records of the school

- Establish the fair market (initial and amortized) value via fixed assets policy, for all fixed assets;
- Establish check off list of purchasers with proper USAS codes, state codes, the price of each item and identify the source of funds;
- Identify staff who will have legal authority for payment processes (e.g. checks, cash, credit cards, etc.);
- Establish disposition plan for any remaining items;
- Identify any State Facilities Commission guarantees.



Prepare documentation for disposition of the school's fixed assets:

1. Consistent with section 3314.051, offer real property acquired from a public school district to that school district's board first at fair market value. If the district board does not accept the offer within 60 days, dispose of the property in another lawful manner below.
2. For Federal Title and other consolidated and competitive funds, follow EDGAR liquidation procedures in 34 CFR 80.32 including disposition for items valued at \$5,000 or greater;



3. Public Charter School Program.

PCSP assets must first be offered to other community schools with requisite board resolutions consistent with the purpose of the PCSP. If there are no takers, then an auction sale must be held to dispose of the assets along with the state funded assets:

- a. Notify Office of Community Schools, then public media (print media, radio) of the date and location of any property disposition auction;
- b. Follow EDGAR liquidation procedures in 34 CFR 80.32 for items valued at \$5,000 or greater;
- c. Provide board resolutions and minutes of any assets transferred at no cost to another school;
- e. Provide OCS with a written report of the property, and if available, a bill of sale;
- f. After the above steps have been taken, any remaining assets may be offered to any public school district with documented board resolutions by the community school and the accepting district.

4. National School Lunch Program.

Cafeteria equipment purchased with funds from the National School Lunch Program can only be liquidated through written guidance issued by the Office for Child Nutrition (OCN). Contact OCN prior to proceeding with any liquidation of Equipment.

5. Technology.

Return to eTech (formerly Ohio SchoolNet) hardware and software acquired with eTech grants.



Utilize only state dollars, auction proceeds, foundation dollars and any other non-federal dollars to pay the following in order:

- The sponsor should consult with its legal counsel prior to implementing this section to determine if there are any outstanding federal or state claims that may need to be paid first, including but not limited to federal and state taxes, Medicare, Workers Compensation, city wage taxes and other similar adjustments. If applicable, provide documentation of any Workers Compensation claims.
- STRS/SERS/retirement systems;
- Teachers and staff;
- Private creditors or those entities that have secured a judgment against the school, including audit preparation and audit costs (prepared financials);

Utilize only state dollars, auction proceeds, foundation dollars and any other non-federal dollars to pay the following in order (Cont.)

- Any remaining funds shall be forwarded to ODE for redistribution to resident school districts consistent with ORC 3314.074 (A)
- If the assets of the school are insufficient to pay all persons or entities to which compensation is owed, the prioritization of the distribution of the assets to individual persons or entities within each class of payees may be determined by decree of a court in accordance section 3314.074 and Chapter 1702 of the Ohio Revised Code.



NOTE 1: Federal dollars can be used to pay the teacher costs and STRS/SERS/retirement costs for any employees who were paid from federal funds when the school was open.

NOTE 2: Audit preparation costs can be paid from federal funds under certain conditions. Contact the Office of Grants Management for specific guidance before applying any costs against federal funds to support audit costs.

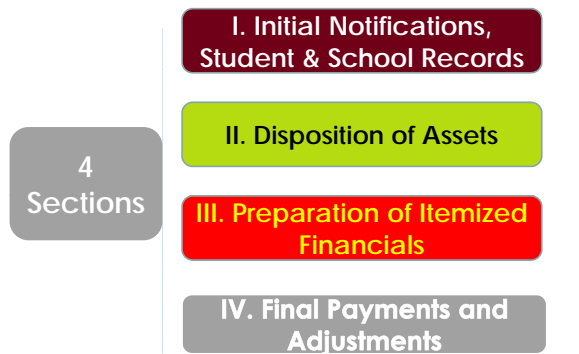


PCSP assets must first be offered to other community schools



Return to eTech (formerly Ohio SchoolNet) hardware and software acquired with eTech grants





Preparation of Itemized Financial

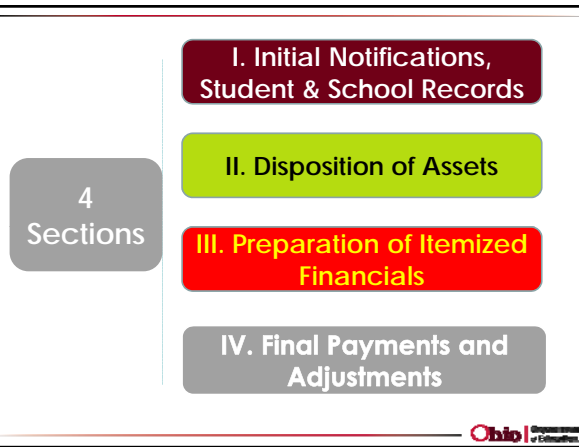
Review and prepare the following itemized financials:

1. Year-end financial statements, notes to the financial statements and if applicable schedule of federal awards;
2. A cash analysis (taking the previous month's recap and reconciliation of bank accounts to books) for determination of the cash balance as of the closing date);
3. Compile bank statements for the year;
4. List of investments in paper hard copy format
5. List of all payables and indicate when a check to pay the liability clears the bank;
6. List all unused checks (collect and void all unused checks);
7. List of any petty cash;
8. List of bank accounts, closing the accounts once all transactions are cleared;
9. List of all payroll reports including taxes, retirement or adjustments on employee contract.
- 10 List of all accounts receivable.
- 11 List of assets and their disposition.
- 12 Final FTE audit information.



Arrange for and establish a date for the Auditor of State to perform a financial closeout audit.





The sponsor shall continually monitor the condition of the closed school and be prepared to receive or transmit funds on behalf of the school as directed by an appropriate agency. Receipt of funds can happen more than a year after a school's closure, and the sponsor must be agile in serving as the recipient of such funds and adjustments.

- Receive any funds or adjustments credited to the account of the closed school.
- Determine if any portion of any funds or adjustments can be applied to satisfy any remaining debt;
- Send all or the remaining portion to the Ohio Department of Education, Office of Policy and Payments, for final disposition.



Questions?

Community Schools Guidance Letter #2011-3
Effective Date: July 1, 2010
Updated: August 3, 2011

Community School Closing Procedures

Objective

To assure that procedures are in place and are used by a community school governing authority and sponsor when the school permanently closes and ceases operation, and shall include, at a minimum, procedures for reporting data to the department, handling student records, distributing assets, and other matters related to ceasing operation of the school.

Policy

Sponsors must provide and execute a plan for an orderly wrap-up of a community school's affairs upon a permanent closure of a community school, preferably prior to the school closing its doors. A school is officially closed when instruction is no longer taking place and the governing authority or sponsor issues an official notice which states the date of the school's closure. The sponsor and a representative of the governing board are required to complete and sign the *Assurance to ODE Form* attached to this guidance letter. The role of the sponsor in this process is to assure that the governing authority of the community school has taken required actions to properly address closing issues and/or to take those actions itself if the governing authority is no longer able or functioning. Inasmuch as a plan for school closure is a required part of the school's contract with the sponsor, final preparations as part of that plan should be in place prior to the last day students are in attendance.

Guidance

This guidance letter provides an easy-to-use Closing *Assurance to ODE Form*. By completing this assurance, sponsors attest that proper notifications have occurred, required data have been submitted (or a plan is in place if data must be submitted after the close of the school), records have been properly distributed, assets have been properly disposed with dates recorded in the cells indicated, and that a final FTE review and the final state audit has been or will be scheduled within 30 days of the closure of the school. The sponsor shall be in touch with the Auditor of State to request that the final audit is scheduled so that this timeline can be met.

There are four sections that comprise the community school sponsor Assurance to ODE Form. These sections, *Initial Notifications*, *Student Records and School Records*; *Disposition of Assets*; and *Preparation of Itemized Financials*, are to be completed as soon as practicable after the closure of the school. In the event that refunds are generated at a later date, the Sponsor shall follow the instructions in Part IV and complete the section *Final Payments and Adjustments*.

Sponsors must collaborate with ODE in assuring that the final FTE review and final state audit are scheduled within 30 days of closure of the school. Sponsors must also sign the assurance form and submit it to the Office of Community Schools. In those circumstances where certain parts of the assurances cannot be completed due to conditions that impede the submission of complete assurances, the sponsor shall notify the Office of Community Schools and arrange for a supplement of the assurances to be turned in at a later date.

Records

As more fully described in this guidance, sponsors are required to secure all school records that are needed by the Ohio Department of Education, U. S. Department of Education, Ohio Auditor of State and other interested entities in order to close the school as well as generate a final FTE review and final audit. Records generally describe particular information that is maintained and kept for the proper administration of the school, and include student, staff, and administrative/financial information. Please note the following categories and types of records should not be considered as the entire list of documents which might be examined during a closing procedure. Other records may be requested during an FTE review or final audit.

Student records, normally found in permanent record folders that are necessary for these reviews and audits, include attendance records that detail enrollment and attendance history; grades and grade levels achieved; transcripts, particularly for students enrolled in grades 9-12 and for graduates of the school; proof of residency documents that identify a student's home district; two (2) SOES reports, one with names and SSID numbers, and one with SSID numbers only; special education folders; and other such information that may be maintained and kept in a student permanent record folder.

Staff records, including employment agreement or contract; salary and benefits information; attendance and leave information; employee licenses; LPDC status and record of continuing education; and other such information that may be maintained in an employee record folder.

Administrative/financial records, including lease or rental agreement; deed if property is owned; inventories of furniture and equipment, including purchase price, source of funds for payment, date purchased, and property tag number; bank and financial reports, including all financial statements created by the fiscal officer; bank statements and checks; schedule of unpaid debt detailing amount, vendor and date of obligation; invoices, receipts, vouchers, and purchase orders that detail expenditures, grant records, including detail of federal and state grant awards and final expenditure reports, contracts; and other such information that may be maintained to serve as the administrative/financial records for the school.

All such records are to be secured by the sponsor prior to closing and shall be maintained until such time as detailed under records retention requirements. In the case of student records, see in particular the procedures detailed in Initial Notifications, Student Records and School Records on the Assurance Form.

References

Ohio Revised Code (ORC) 3314.015 "(E): The department shall adopt procedures for use by a community school governing authority and sponsor when the school permanently closes and ceases operation, which shall include at least procedures for data reporting to the department, handling of student records, distribution of assets in accordance with section 3314.074 of the Revised Code, and other matters related to ceasing operation of the school."

Attachments

Assurance to ODE Form

Assurances Documents – Submit To

Office of Community Schools
Ohio Department of Education
25 South Front St., Mail Stop 307
Columbus, Ohio 43215-4183
(614) 466-7058 (Fax) (614) 466-8506

Assurance to ODE Form

I. Initial Notifications, Student Records and School Records	
Completion Date	Mandatory Task
	<i>To the extent that the school governing authority is unable or unwilling to execute its responsibilities in effecting an orderly closure of the school, the sponsor shall assume part or all of such tasks as are hereinafter described.</i>
	Notify ODE that the school is closing and send the board resolution or an official sponsor notice from the superintendent or CEO within 24 hours of the action which includes the date of closing of the school. A school is officially closed when instruction is no longer taking place and the governing authority or sponsor issues an official notice which states the date of the school's closure.
	Notify parents that the school is closing through a formal letter from the school GA and the sponsor superintendent or CEO within 24 hours of the action. The letter to include but not limited to: the reason for the closing of the school, options for enrolling in another community school, traditional schools or nonpublic schools and contact information.
	Notify the Ohio State Teachers Retirement System and School Employees Retirement System.
	The sponsor shall take control of and secure all school records, property and assets immediately when the school closes:
	1. Student records shall be put into order and transcript materials produced immediately;
	2. A final FTE review shall be requested while student records are on site at the closed school and original student records shall be retained for the final state audit;
	3. Copies of student records shall be provided by the school's Chief Administrative Officer to all resident districts within seven business days of closure of the school as defined in section 3314.44 of the revised code; original records shall be sent by the sponsor to resident districts upon completion of the final state audit. In the interim, sponsors retain original records until completion of the audit.
	4. Special education records shall be provided directly to receiving school special education administrators for all students with disabilities, particularly for students with physical needs or low incidence disabilities.
	In concert with the governing authority, notify the school's staff of the decision to close the school:
	1. Provide a clear written timeline of the closing process;
	2. Ensure that STRS and SERS contributions are current;

Completion Date	Initial Notifications, Student Records and School Records Mandatory Task Continued
	3. Clarify COBRA benefits and when medical benefits end;
	4. Remind the faculty of their obligation to teach up to the date of closing or otherwise determine that the school is properly staffed up to the time of closing;
	5. Ensure that each faculty's LPDC information is current and available to the teachers;
	6. Provide sponsor contact person information to all staff.

II. Disposition of Assets	
Completion Date	Mandatory Task
	<i>To the extent that the school governing authority is unable or unwilling to execute its responsibilities in effecting an orderly closure of the school, the sponsor shall assume part or all of such tasks as are hereinafter described.</i>
	If the governing authority does not retain a treasurer to oversee the remaining financial activity, the sponsor, as may be provided for in the community school contract with the governing authority, shall act as or appoint a receiver to oversee the closing of the financial records in the absence of a fiscal officer.
	Keep State and Federal assets separated for purposes of disposition. Federal dollars cannot be used to pay state liabilities. Account for all school property throughout the closing process by distinguishing state from federal dollars:
	1. Review the financial records of the school;
	a. Establish the fair market (initial and amortized) value via fixed assets policy, for all fixed assets;
	b. Establish check off list of purchasers with proper USAS codes, state codes, the price of each item and identify the source of funds;
	c. Identify staff who will have legal authority for payment processes (e.g. checks, cash, credit cards, etc.);
	d. Establish disposition plan for any remaining items;
	e. Identify any State Facilities Commission guarantees.
	Prepare documentation for disposition of the school's fixed assets:
	1. Consistent with section 3314.051, offer real property acquired from a public school district to that school district's board first at fair market value. If the district board does not accept the offer within 60 days, dispose of the property in another lawful manner below.
	2. For Federal Title and other consolidated and competitive funds, follow EDGAR liquidation procedures in 34 CFR 80.32 including disposition for items valued at \$5,000 or greater;

Completion Date	II. Disposition of Assets, Mandatory Task <i>continued</i>
	3. <u>Public Charter School Program</u> . PCSP assets must first be offered to other community schools with requisite board resolutions consistent with the purpose of the PCSP. If there are no takers, then an auction sale must be held to dispose of the assets along with the state funded assets:
	a. Notify Office of Community Schools, then public media (print media, radio) of the date and location of any property disposition auction;
	b. Follow EDGAR liquidation procedures in 34 CFR 80.32 for items valued at \$5,000 or greater;
	c. Provide board resolutions and minutes of any assets transferred at no cost to another school;
	e. Provide OCS with a written report of the property, and if available, a bill of sale;
	f. After the above steps have been taken, any remaining assets may be offered to any public school district with documented board resolutions by the community school and the accepting district.
	4. <u>National School Lunch Program</u> . Cafeteria equipment purchased with funds from the National School Lunch Program can only be liquidated through written guidance issued by the Office for Child Nutrition (OCN). Contact OCN prior to proceeding with any liquidation of Equipment.
	5. <u>Technology</u> . Return to eTech (formerly Ohio SchoolNet) hardware and software acquired with eTech grants.
	Utilize only state dollars, auction proceeds, foundation dollars and any other non-federal dollars to pay the following in order: <i>[See Note Below]</i>
	1. The sponsor should consult with its legal counsel prior to implementing this section to determine if there are any outstanding federal or state claims that may need to be paid first, including but not limited to federal and state taxes, Medicare, Workers Compensation, city wage taxes and other similar adjustments. If applicable, provide documentation of any Workers Compensation claims.
	2. STRS/SERS/retirement systems;
	3. Teachers and staff;
	4. Private creditors or those entities that have secured a judgment against the school, including audit preparation and audit costs (prepared financials); <i>[See Note 2 Below]</i> .

Completion Date	II. Disposition of Assets, Mandatory Task <i>continued</i>
	5. Any remaining funds shall be forwarded to ODE for redistribution to resident school districts consistent with ORC 3314.074 (A)
	6. If the assets of the school are insufficient to pay all persons or entities to which compensation is owed, the prioritization of the distribution of the assets to individual persons or entities within each class of payees may be determined by decree of a court in accordance section 3314.074 and Chapter 1702 of the Ohio Revised Code.
	<p>NOTE 1: Federal dollars can be used to pay the teacher costs and STRS/SERS/retirement costs for any employees who were paid from federal funds when the school was open.</p> <p>NOTE 2: Audit preparation costs can be paid from federal funds under certain conditions. Contact the Office of Grants Management for specific guidance before applying any costs against federal funds to support audit costs.</p>

III. Preparation of Itemized Financials	
Completion Date	Mandatory Task
	<i>To the extent that the school fiscal officer is unable or unwilling to perform his/her responsibilities in effecting an orderly closure of the school, the sponsor shall assume part or all of such tasks as are hereinafter described.</i>
	Review and prepare the following itemized financials:
	1. Year-end financial statements, notes to the financial statements and if applicable schedule of federal awards;
	2. A cash analysis (taking the previous month's recap and reconciliation of bank accounts to books) for determination of the cash balance as of the closing date);
	3. Compile bank statements for the year;
	4. List of investments in paper hard copy format
	5. List of all payables and indicate when a check to pay the liability clears the bank;
	6. List all unused checks (collect and void all unused checks);
	7. List of any petty cash;
	8. List of bank accounts, closing the accounts once all transactions are cleared;
	9. List of all payroll reports including taxes, retirement or adjustments on employee contract.
	7. List of all accounts receivable.

	8. List of assets and their disposition.
	9. Final FTE audit information.
	Arrange for and establish a date for the Auditor of State to perform a financial closeout audit.

IV. Final Payments and Adjustments	
Completion Date	Mandatory Task
	<i>To the extent that the school fiscal officer is unable or unwilling to perform his/her responsibilities in effecting an orderly closure of the school, the sponsor shall assume part or all of such tasks as are hereinafter described.</i>
	The sponsor shall continually monitor the condition of the closed school and be prepared to receive or transmit funds on behalf of the school as directed by an appropriate agency. Receipt of funds can happen more than a year after a school's closure, and the sponsor must be agile in serving as the recipient of such funds and adjustments.
	1. Receive any funds or adjustments credited to the account of the closed school.
	2. Determine if any portion of any funds or adjustments can be applied to satisfy any remaining debt;
	3. Send all or the remaining portion to the Ohio Department of Education, Office of Policy and Payments, for final disposition.

The sponsor and school governing authority representative identified below have completed the above school closing assurances.

School Name: _____

Sponsor Name: _____

Sponsor Representative: _____ Date: _____

Governing Authority Representative _____ Date: _____

Please submit to:

Office of Community Schools
 25 South Front St., Mail Stop 307
 Columbus, Ohio 43215-4183
 (614) 752-5551 (Fax) (614) 466-8506



Dave Yost
Auditor of State



2011 COMMUNITY SCHOOL TRAINING
“Top 10 Questions”
August 15, 2011
Presented by:
Kim Blake, CPA
Accounting & Auditing Support

Ohio Auditor of State
Dave Yost

www.auditor.state.oh.us

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TOP 10 AUDIT QUESTIONS:




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QUESTION #10

How is it determined who performs community school audits.....Auditor of State (AOS) or Independent Public Accountants (IPAs)



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QUESTION #10

- AOS regional offices make determinations
 - Based on regional schedules
 - Client can make requests
 - Contract terms are typically 3-5 years



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QUESTION #10

AUDITOR OF STATE'S OFFICE
Audit Regions Map

Athens	800-441-1389
Canton	800-443-9272
Cincinnati	800-368-7419
Cleveland	800-626-2297
Columbus	800-443-9275
Dayton	800-443-9274
Toledo	800-443-9276
Youngstown	800-443-9271



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QUESTION #9

What standards do auditors follow?



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QUESTION #9

- We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in the Comptroller General of the United States' *Government Auditing Standards*.



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QUESTION #9

- Governmental Accounting Standards Board (GASB)
 - Original Pronouncements
 - Concept Statements
 - Technical Bulletins
 - Interpretations
- AICPA – Statement on Auditing Standards (SAS)



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QUESTION #9

- US Government Accountability Office (GAO)
 - Generally Accepted Government Auditing Standards (GAGAS) (Yellowbook)
 - <http://www.gao.gov/yellowbook>



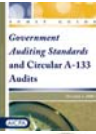
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QUESTION #9

- AICPA Guides
 - State and Local Government Guide (formerly ASLGU, now referred to as the SLG)



- Government Auditing Standards & Circular A-133 Guides

QUESTION #8

What are internal controls and some real life examples



QUESTION #8

- Vouchers/Invoices:
 - Attach invoices to vouchers as supporting documentation for all disbursements.
 - File vouchers in numeric order.
 - Indicate approval for payment on invoice and mark invoice and voucher paid to reduce chances of duplicate payment.
- Maintain files of grant applications and related information:
 - Prepare a file folder for each separate grant and maintain all documents related to the grant in this file.



QUESTION #8

- Segregate accounting functions whenever possible (i.e., deposits, recording, approval, reconciliation). If staff is limited, set up independent review procedures.
- Prepare narratives of department functions.
- Limit access to EDP system both physically and through passwords



QUESTION #8

- Develop policies & procedures and follow them; having employees read and sign as acknowledgement of policies
 - Changes in laws and regulations and management’s communication of changes to employees
 - Personnel and accounting policy and procedures
 - Develop record retention policies



NOTE: Obtain written opinion from legal counsel on gray areas

QUESTION #8

- Board functions as management and have the sole responsibility for setting the “tone at the top on their view of “internal controls”
 - To protect assets from loss
 - Ensure transactions are authorized
 - Ensure all funds are collected for services provided by the school
 - Ensure restricted funds used according to allowable purposes
 - Compliance with applicable laws and regulations
 - Effectiveness and efficiency of operations



QUESTION #7

Are all the laws I have to follow included in the Ohio Compliance Supplement?



QUESTION #7

The Ohio Compliance Supplement (OCS) contains certain laws and regulations which are of considerable public interest, or are of the type auditors generally consider direct and material.

Though the OCS is not a **comprehensive listing** of applicable laws and regulations, it is designed to help auditors and public offices identify and familiarize themselves with certain laws and regulations.



QUESTION #7

Matrix 3

Chapter 4: Accounting and Reporting



Step No.	Requirement	County	Township	City	Village	Public & STEM Schools	Community School
1.	OAC 117-2-03 (B) GAAP Financial Reporting (counties, cities, school districts, and community schools)	✓		✓		✓	✓
3.	3314.024 Footnote disclosure of management company expenses						✓
4.	117.111(A) Security controls over counties' electronic records	✓					
5.	OAC 117-2-02 Required accounting records	✓	✓	✓	✓	✓	✓

QUESTION #7

- Ohio Revised Code
- Ohio Administrative Code
- Grant Assurances
- Contracts with other entities
- Others....



QUESTION #6

What is the difference
between a Finding for
Recovery & a Questioned
Cost?



QUESTION #6

- Finding for Recovery - Ohio Rev. Code Section 117.28 authorizes the Auditor of State to report a *finding for recovery* in audit reports when legal action may be appropriate to recover public money or property



QUESTION #6

Under Ohio Rev. Code Sections 9.24(H)(3) and 117.28, a finding for recovery may exist when:

- Public money has been illegally expended;
- Public money that has been collected has not been accounted for;
- Public money that is due has not been collected; or when
- Public property has been converted or misappropriated

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QUESTION #6

- **ONLY IMPACTS FEDERAL ACTIVITY**
 - Allowable Costs under 2CRF225 – Appendix C gives basic guidelines and costs

Must meet the following general criteria:

- Be necessary and reasonable for proper and efficient performance and administration of Federal awards.
- Be allocable to Federal awards under the provisions of 2 CFR part 225.
- Be authorized or not prohibited under State or local laws or regulations.

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QUESTION #6

- Conform to any limitations or exclusions set forth in these principles, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types or amounts of cost items
- Be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit.
- Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.

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QUESTION #6

- Except as otherwise provided for in 2 CFR part 225, be determined in accordance with generally accepted accounting principles.
- Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or a prior period, except as specifically provided by Federal law or regulation.
- Be the net of all applicable credits.
- Be adequately documented.



QUESTION #6

Appendix B of 2CRF225
Describes in detail selected items of cost, however, you need to also look at grant assurances to ensure prohibition of cost is not indicated.

NOTE: discuss gray areas with granting agency.



QUESTION #5

If my school closes....
do I need an audit?



QUESTION #5

YES!

- **Administrative Code section 117-2-06 states:** notwithstanding any provision to the contrary the auditor of state may provide for an audit any time the auditor of state deems it in the public interest or upon formal request by the governing body of the public office.



QUESTION #4

What are Community Schools' responsibilities when a school is closed and/or suspended?



QUESTION #4

- Maintain & secure all records
- Prepare Financial Statements & Notes
- A-133 Federal Schedule (if applicable)
- Notify stakeholders (including AOS) of closing or suspension
- If closing, perform close out procedures



QUESTION #3

What is the date of my audit period if my school closes or suspends operations?



QUESTION #3

- Typically, we audit through the suspension date or the formal close of the school
- A subsequent event note through the release date of the audit report
- Other Factors
 - Timeframe of school closure and the date we are performing the audit
 - Timeframe of closure to fiscal year end
 - Number of transactions – required addition year of f/s or is subsequent event note adequate



QUESTION #2

Who's responsible for preparing financial statements and notes?



QUESTION #2



- These financial statements are the responsibility of the Government's **management**. Our responsibility is to express opinions on these financial statements based on our audit.
- Paragraph 1 of your opinion
 - 4th Reporting Standard - AU Section 508, paragraph 8 (c)

QUESTION #2

- Other Factors:
 - Independence of your auditors
 - Opinions on the financial statements
 - Unqualified
 - Qualified
 - Disclaim
 - Adverse



QUESTION #1

If you can't find the answer to your questions, who do you ask?



QUESTION #1

AUDITOR OF STATE

<http://www.auditor.state.oh.us/services/lgs/CommunitySchools/default.htm>



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ACCOUNTING & AUDITING DIVISION

88 East Broad Street
Columbus, Ohio 43215

Kimberly Blake, CPA

Presenter Phone: (800) 282-0370

Presenter Fax: 866-381-0157

E-mail: kqblake@auditor.state.oh.us

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Community School Legislative Changes


Barbara Mattei-Smith
Assistant Policy Director - Education
Office of Ohio Governor John R. Kasich
Barbara.matteismith@governor.ohio.gov
www.governor.ohio.gov





Community School Funding

- * Base funding - \$5,063 per pupil
- * Special Education and Career Technical Weighted formulas carry forward from FY2009
- * Poverty based assistance and Parity aid at the per pupil amount provided resident district in FY2009
- * All day kindergarten provided for students from districts which qualified for ADK in FY2009
- * E-school enrollment continues if student begins within 105 hours of first day of school



Subsidy for High Performing Schools

- * Schools rated Excellent or Excellent with Distinction
- * Report card data for school year 2010-2011
- * \$17 per funded pupil



Shared Services

- * Allows for transfer of funds to county Family and Children First Council to provide services to families and children
- * Allows for joint educational programs with other school districts or community schools
 - * Prohibits tuition charges for students in joint program



Facilities

- * Right of first refusal for all property, not just property suitable for classroom use
- * School district property previously used for classroom operations but not used for such in last two years
- * Required to sell or lease to community school located in the district
- * One community school bid for purchase or lease – fair market value
- * Multiple community schools bid for purchase – auction for not less than fair market value
- * Multiple community school bid for lease – lottery for fair market value



Facilities

- * Permits two or more schools to be located in same facility
- * Allows same grade levels in multiple facilities when:
 - * Facilities are located in same county
 - * School contracts with an operator to manage the school
- * Requires ODE to provide unique identifier (not IRN) for each facility
- * Extends school property tax exemptions to portion of real property used by a community school even when the property is within a building “with a view to profit”



New Community Schools

- * Repeals brick and mortar limitations
- * Continues e-school moratorium until July 1, 2013
 - * General Assembly to enact e-schools standards by January 1, 2012 or implements International Association for K-12 Online Learning standards
 - * Allows up to five new e-schools per year beginning in FY2013
- * Defines challenged school districts to include districts ranked in bottom 5% of all school districts based on performance index
- * Allows new conversion community schools opening in the 2011-2012 school year to enter into a sponsor agreement after May 15th; contract must be filed with ODE prior to school opening



Governing Boards

- * Limits compensation to
 - * \$5,000 per year per individual (total from all governing authorities)
 - * \$425 per meeting
- * Allows for allocation between schools when member serves on more than one board meeting on same day
- * Compensation paid from funds provided operator if school contracts with an operator
 - * No reference for multiple operator contracts
- * Revolving door provision added for governing board members



Sponsor Limits

- * Allows up to 100 schools per sponsor
- * Requires sponsors to be ranked based on composite performance index
- * Sponsors ranked in bottom 20% of all sponsors may not sponsor additional schools
 - * Schools contracting with sponsor in bottom 20% but not yet opened must find new sponsor
- * Excludes schools that primarily serve disabled students and drop-out recovery schools
 - * If standards for these schools are not adopted by January 1, 2013, this exclusion expires
- * Eliminates the cap reduction when a school closes



Sponsorship

- * Repeals requirement to have representative within 50 miles of school
- * Requires monthly monitoring meeting with sponsored schools
 - * Governing board or treasurer
 - * Review of financial and enrollment records



Contract Termination

- * Sponsor to provide notice of intent to terminate contract by February 1
 - * Requires informal hearing within 14 days of notice
 - * Written notice of hearing determination within 14 days of hearing
 - * Requires appeal of termination to State Board of Education within 14 day of hearing determination notice
- * Terminations effective on earlier of:
 - * Date of notice of termination
 - * Date set by SBOE if termination appealed



ODE Sponsorship

- * Creates the Ohio School Sponsorship Program
- * New or continuing schools may apply to ODE for sponsorship
- * Defines application requirements
- * May accept 20 schools per year for sponsorship
- * Contract term of five years
- * May charge sponsorship fee of up to 3% of state aid
- * Existing schools may enter into agreement at any time during year
- * Permits ODE to require bond or guarantee for repayment of funds if school prematurely closes
- * Requires annual reports with recommendations for changes in fifth year



School Closure

- * Changes mandated closure to require schools that do not offer a grade higher than 3, and schools that offer any of grades 10 to 12, to close after being in academic emergency for two of the three most recent school years (rather than three of the four most recent school years)



Teacher Compensation

- * Requires schools participating in Race to the Top to adopt teacher and principal evaluation policies that adhere to state model by July 1, 2013
- * Community Schools participating in Race to the Top AND includes compensation in their scope of work are required to adopt performance based salary schedules
- * Performance based salary schedules are tied to the teacher evaluations



Performance Ranking

- * Requires ODE to develop standards for determining the amount of annual operating expenditures for classroom instruction and the amount for non-classroom activities (July 1, 2012)
- * Requires ranking according to classroom expenditures and school size for brick and mortar and e-schools to be reported on local report cards
- * Note schools in the lowest 20% of expenditures and highest 20% of performance index



Performance Rankings

- * Requires ODE to create rankings according to:
 - * PI score
 - * Value added
 - * CTE performance measures
 - * Current operating expenditure per pupil
 - * % spent on classroom instruction
 - * Gifted student performance
- * Requires annual report of the rankings
- * Creates Governor's Effective and Efficient School program to recognize schools in top 10% of this ranking



GED

- * Requires student between the ages of 16 and 18 applying to take the GED to receive permission from the community school principal where last enrolled
- * Requires the student taking a GED to be counted as a drop out from the school last enrolled in



Calamity Days

- * Recognizes calamity days for calculation of FTE for community schools (HB 36)
- * Authorizes make-up of three calamity days through lessons posted online on the school's web site or web portal if a plan is submitted to ODE by Aug. 1
- * Allows the plan to include "blizzard bags" which are paper lesson plans distributed to students that correspond with lessons posted on the school's web portal or web site.



Distance Learning

- Requires all Ohio students to have access to high quality distance learning courses at any point in their educational careers.
- Requires all students to be able to customize their education using distance learning courses offered through the clearinghouse. Specifies that no eligible student is to be denied access to any course in the clearinghouse.
- Permits students to take distance learning courses for all or any portion of their curriculum requirements.
- Permits students to earn an unlimited number of academic credits through distance learning courses.
- Permits students to take distance learning courses at any time of the calendar year.
- Requires student advancement to be based on a demonstration of subject area competency instead of completion of any particular number of hours of instruction.



Distance Learning

- Replaces a requirement that distance learning students have course enrollment, grades, and credits approved by their district or school with a requirement that each district and school encourage and assist students to enroll in distance learning courses.
- Requires that a district or school award a student credit for successful completion of a distance learning course.
- Requires that the credit awarded for the distance learning course be equal to the credit awarded for a similar course offered by the school.
- Specifies that districts and schools are not required to pay distance learning course fees.
- Specifies that districts or schools cannot limit student access to or participation in clearinghouse courses, or refuse to recognize clearinghouse courses as fulfilling curriculum requirements, including high school diploma requirements.



Miscellaneous Provisions

- * Removes intent language limiting use of state funds for tax obligations
- * Removes e-school spending requirements
- * Prohibits employees of community school sponsored by a municipal school district from collectively bargaining; allow mayor to submit request for removal of current employees from unit
- * Requires ODE to develop plan for extended drop-out recovery schools (age 22-29)



Miscellaneous Provisions

- * Prohibits a community school from requiring an adult education instructor to undergo a criminal records check if the applicant had a records check within the previous two years when hired for short-term employment
- * Requires subject area testing for all teachers employed in a school ranked in the bottom 5% of all schools based on performance index



Next Steps

- * Creation of an educational shared services plan by January 1, 2012 with recommendations for implementation beginning July 1, 2012.
- * Digital learning taskforce to issue a report to the Governor and the General Assembly by March 1, 2012 with recommendations for:
 - (1) free, high quality digital content and instruction; (2) professional development for teachers and principals; (3) funding strategies; (4) student assessment and accountability; (5) digital learning infrastructure; (6) mobile learning; (7) the distance learning clearinghouse; (8) ways to align the resources and digital learning initiatives of state agencies and offices; (9) a request for proposals for a digital learning site, to replace the OhioLearns! Gateway; (10) methods of addressing future changes in technology and learning.
- * Development of new funding model for possible implementation in FY2013
