



OHIO ETHICS COMMISSION
THE ATLAS BUILDING
8 EAST LONG STREET, SUITE 1200
COLUMBUS, OHIO 43215-2940
(614) 466-7090

ARE PUBLIC SCHOOL TEACHERS SUBJECT TO THE OHIO ETHICS LAW?

In Advisory Opinion No. 93-017, the Ohio Ethics Commission stated that teachers and other educators whose positions do not involve the performance, or authority to perform, administrative or supervisory functions, are bound by only some of the prohibitions of the Ohio Ethics Law. The Commission specifically stated that all teachers and other educators employed by a school district, regardless of their duties, are subject to R.C. 102.04 (C), R.C. 2921.42, and R.C. 2921.43.

R.C. 102.04 (C) prohibits a public school teacher from accepting compensation from any source, other than the school district that employs him, for performing services on matters pending before the board or other entity of the school district.

R.C. 2921.42 prohibits a school teacher, in part, from:

- Authorizing or using his position as a teacher to secure authorization of any school district contract in which he, his family members, or his business associates have an interest;
- Profiting from a school district contract he authorized, unless it was awarded to the lowest and best bidder after a competitive bid; and
- Having an interest in the profits or benefits of a school district contract.

R.C. 2921.43 prohibits a school teacher from accepting or soliciting any compensation, other than as allowed by law, for performing his public duties.

All other school district officials and employees, including teachers who do perform, or have the authority to perform, administrative and supervisory functions, are subject to all Ethics Law restrictions, including the post-employment, confidentiality, and conflict of interest provisions of R.C. 102.03.

This abstract is not an Ethics Commission Advisory Opinion. It summarizes Advisory Opinion No. 93-017, which is attached, and also summarizes some of the prohibitions by which public school teachers are bound. Copies of Ethics Commission Advisory Opinions and the Ethics Law are available from the Ohio Ethics Commission, The Atlas Building, 8 East Long Street, Suite 1200, Columbus, Ohio, 43215-2940, (614) 466-7090.



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Advisory Opinion
Number 93-017
December 3, 1993

Syllabus by the Commission:

- (1) Division (E) of Section 102.09 of the Revised Code requires that every public agency or appointing authority provide a copy of the Ohio Ethics Law to every public official and employee who serves the public agency within fifteen days after she begins the performance of her official duties;
- (2) A teacher, instructor, professor, or other kind of educator employed by a school district is not a "public official or employee," as defined in Division (B) of Section 102.01 of the Revised Code, unless her position involves the performance of, or authority to perform, administrative or supervisory functions;
- (3) A teacher, instructor, professor, or other kind of educator employed by a school district is subject to the restrictions of Division (C) of Section 102.04, and Sections 2921.42 and 2921.43, of the Revised Code, regardless of whether her position involves the performance of, or authority to perform, administrative or supervisory functions.

* * *

You have asked to which types of school personnel your school district is required, by Division (E) of Section 102.09 of the Revised Code, to provide Ethics Law information. Specifically, you have asked whether the school district is required to provide ethics information to teachers or other educators.

R.C. 102.09 (E) provides that, within fifteen days after a "public official or employee" begins the performance of her official duties, the public agency she serves or the appointing authority must provide her with a copy of Chapter 102. and Section 2921.42 of the Revised Code. In addition, R.C. 102.09 (E) requires that the official or employee shall acknowledge her receipt of the material in writing.

The term "public official or employee" is defined in R.C. 102.01 (B) to include any person who is elected or appointed to an office of, or is an employee of, any public agency, except that:

"Public official or employee" does not include a person who is a teacher, instructor, professor, or any other kind of educator whose position does not involve the performance of, or authority to perform, administrative or supervisory functions.

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The term "public agency" includes any school district in the state. See R.C. 102.01 (C); Ohio Ethics Commission Advisory Op. No. 91-006.

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 The New Lexicon Webster's Dictionary of the English Language, 11 and 994. For example, an educator who is the head of an academic department and establishes the curriculum, teaching activities, or other matters for the department is a teacher whose position involves the performance of administrative duties. In another example, an instructor who also acts as an athletic coach, and supervises the activities of assistant coaches, is an educator whose position involves the performance of supervisory duties. See generally Advisory Op. No. 91-006.

It should be noted that the Ethics Commission is relying on a common usage definition of the terms "administrative" and "supervisory." These definitions may not be the same definitions used for employment or other purposes. The Commission cannot, of course, determine whether a particular employee is a "supervisor" or "administrator" for purposes of employee benefits, salary, promotion, collective bargaining, or any other matters.

Therefore, 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 defined in R.C. 102.01 (B). See generally Advisory Op. No. 77-005. Thus, R.C. 102.09 (E) requires the school district to provide all of these "public officials and employees" with a copy of the Ohio Ethics Law within fifteen days after they begin their public service, and the officials and employees must sign a form acknowledging that they have received the information.

While the school district is not required, by R.C. 102.09 (E), to provide a copy of the Ethics Law to teachers or other educators whose positions do not involve the performance of, or authority to perform, administrative or supervisory functions, it may elect to provide ethics materials to the employees.

Finally, you should be aware that, although some teachers and other educators do not fall within the definition of "public official or employee" under R.C. 102.01 (B), many of the substantive prohibitions of the Ethics Law and related statutes do apply to them. The prohibition of R.C. 102.04 (C) applies to any "person who is . . . employed by . . . [a] governmental entity." Teachers and other instructors employed by school districts are persons employed by a

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governmental entity, regardless of their duties. See generally Advisory Ops. No. 75-015, 75-027, and 77-005. Therefore, the prohibition of R.C. 102.04 (C) applies to all teachers and instructors employed by school districts.

The prohibitions of R.C. 2921.42 apply to "public officials" and the prohibitions of R.C. 2921.43 apply to "public servants." The term "public official" is defined to include "any elected or appointed officer, or employee, or agent of . . . any political subdivision." A teacher or other instructor, appointed or employed by a school district, is an employee of a political subdivision, regardless of her duties, and is therefore a "public official." The term "public servant" is defined to include "public officials." Therefore, every teacher or instructor employed by a school district is a "public official" and a "public servant," and is subject to the prohibitions of R.C. 2921.42 and 2921.43.

Thus, since teachers and other instructors are subject to many of the provisions of the Ohio Ethics Law and related statutes, regardless of whether the teachers and instructors perform administrative or supervisory duties, it would be helpful for the school district to provide a copy of the Ohio Ethics Law to these individuals.

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) Division (E) of Section 102.09 of the Revised Code requires that every public agency or appointing authority provide a copy of the Ohio Ethics Law to every public official and employee who serves the public agency within fifteen days after she begins the performance of her official duties; (2) A teacher, instructor, professor, or other kind of educator employed by a school district is not a "public official or employee," as defined in Division (B) of Section 102.01 of the Revised Code, unless her position involves the performance of, or authority to perform, administrative or supervisory functions; and (3) A teacher, instructor, professor, or other kind of educator employed by a school district is subject to the restrictions of Division (C) of Section 102.04, and Sections 2921.42 and 2921.43, of the Revised Code, regardless of whether her position involves the performance of, or authority to perform, administrative or supervisory functions.



Jack Paul DeSario, Chair
Ohio Ethics Commission