

February 5, 1997

OHIO ELECTIONS COMMISSION

Advisory Opinion 97ELC-01

SYLLABUS: A school board member is considered an “employee” for purposes of R.C. §3599.031

TO: Richard A. Slee
Deputy Director of Legal Services
Ohio School Boards Association

You have requested an advisory opinion on the following question:

Is a school board member considered an “employee” for purposes of ORC Section 3599.031?

Incorporated in the revisions to Ohio’s campaign finance laws in Amended Substitute Senate Bill 8 (SB8) by the 121st General Assembly, were certain limitations on the manner in which employers and employees could utilize payroll deduction on wages of employees for funding political contributions. R.C. §3599.031 sets out the guidelines for employers and employees in using payroll wage deductions for the establishment of a PAC or making other political contributions. Under this statute, a public employer is prohibited from using payroll deductions for political purposes, and an employer may only make deductions for political purposes that are authorized in writing by the employee. Further, if the political deductions are allowed and the PAC fund is established on behalf of the employee, disbursements may only be made on behalf of the employee after the employer obtains an additional written authorization from that employee.

It is important to note that the prohibition on public employer payroll deduction is currently subject to a temporary injunction imposed by the federal district court in Toledo. Regardless, the term “employee” is not subject to the injunction and it is therefore appropriate for the Commission to opine on this subject in order to clarify the scope of the term “employee.”

In order to determine the manner in which these statutes apply in this context, we must first ascertain the identity of a member of a board of education. R.C.

§3313.01 requires that a member of a board of education be an elector who resides in the territory which comprises the district of the board of education. The Ohio Constitution at Article V §1 defines an elector as an individual over the age of 18, a citizens of the United States, a resident of the district, and properly registered with the appropriate county board of elections. Therefore, to be a member of a board of education, a citizen of Ohio need be resident in the district, a citizen of the United States, over the age of 18, and properly registered with the county board of elections.

Next we must ascertain how the term “employee” is to be applied in this context and whether members of a local board of education should be included when R.C. §3599.031 uses the word “employee”. R.C. §3599.031(J) merely defines an “employee” as a resident of or a person employed in the state of Ohio. Under this minimal definition a board member is necessarily included as an employee since a board member, as an elector, must be an Ohio resident. However, this definition is not intended to be dispositive, but merely exclusive to persons who have no contact with the state of Ohio. In order to clarify further, we must look elsewhere in the statutes.

It would be appropriate to first look in other chapters of Title XXXV for an applicable definition of “employee”. A suitable definition can be found in R.C. §3517.01(B)(13), which defines a “(p)ublic official or employee” for use in R.C. §3517.08 to §3517.14. This definition is one which is applicable to other statutes over which the Commission has jurisdiction, and is generally used in the area of campaign finance. This section cross-references to the definition in R.C. §102.01, Ohio’s ethics law.

The definition in R.C. §102.01 defines a “(p)ublic official or employee” as any person who is elected or appointed to an office or is an employee of any public agency. This definition broadly interprets the term “employee” to include elected officials. As we have already identified, members of boards of education are elected officials. Therefore, for all other purposes in the area of campaign finance, members of boards of education are to be included in the definition and are subject to the provisions in R.C. §3517.08 to §3517.14.

While this definition may better be applied to a public official than an employee, it is important to acknowledge the Ohio Supreme Court’s holding in this area. In the case of Scotfield v. Strain, 142 OS 290, 51 N.E.2d 1012 (1943), the court stated that, while an employee may not be a public official, a public official is an employee in terms of public employment. Id. @ 291, 51 N.E.2d @ 1013.

There are other definitions of “employee” in the Revised Code. When used in the context of workers compensation, the term “employee” would include a member of the board of education (R.C. §4123.01(A)(2)). Alternatively, when used in the context of labor relations, a member of the board of education would be excluded from the definition of employee (R.C. §4117.01(C)(1) to (15)). Therefore, as this Commission considers the proper definition of the term “employee”, it is appropriate for it to return to the definition in R.C. §102.01, which this Commission believes is most applicable for a number of reasons for which we will now further expound.

First, since R.C. §3599.031 is included in the jurisdiction of the Ohio Elections Commission along with R.C. §3517.08 through R.C. §3517.14, it would be appropriate to use similar definitions for related words and phrases so as to make interpreting these statutes as consistent and harmonious as possible. Second, one of the primary purposes of the ethics statutes, similar to the campaign finance statutes, is disclosure of certain information which is believed to be beneficial to the people of the state of Ohio. Such similarity would also encourage further consistency in interpretation. Third, it is appropriate to interpret R.C. §3599.031 in such a manner as to be all inclusive for all levels of “employees.” An equitable interpretation of this statute would require that any person that receives remuneration from a school district should be included in the term “employee” for the purposes of R.C. §3599.031.

Accordingly, it is the opinion of the Ohio Elections Commission, and you are so advised, that a school board member is considered an “employee” for purposes of R.C. §3599.031.

Sincerely,

Alphonse P. Cincione
Chairman