

THE JOINT LEGISLATIVE ETHICS COMMITTEE

Advisory Opinion 00-006
December 13, 2000

Syllabus by the Committee:

- (1) R.C. 102.03(D) and (E) do not prohibit a member of the General Assembly from voting on a bill to increase the compensation of a position to which the member has been elected or re-elected, but has not yet taken office;
- (2) R.C. 102.03(D) and (E) do not prohibit a member of the General Assembly from voting on a bill to increase the compensation of a position to which a family member has been elected, re-elected, appointed, or hired; and
- (3) R.C. 2921.42 does not prohibit a member of the General Assembly from voting on a bill to increase the compensation of a position to which a family member has been elected, re-elected, appointed, or hired where an entire class of employees/officials has received an increase.

Jurisdiction and Question Presented

Pursuant to sections 101.34 and 102.08 of the Ohio Revised Code that direct the Joint Legislative Ethics Committee to act as an advisory body to the members and employees of the General Assembly on questions relating to ethics, conflicts of interest, and financial disclosure, the Joint Legislative Ethics Committee advises the members and employees of the General Assembly on the following questions: (1) May a member of the General Assembly vote for an increase in compensation where the member has been elected or re-elected to one of the positions receiving an increase? and (2) May a member of the General Assembly vote for an increase in

compensation where a relative of the member has been elected, re-elected, appointed, or employed to one of the positions receiving an increase?

Background

The House and Senate recently enacted H.B. 712. The bill increased the compensation of county elected officials, township trustees and clerks, members of the boards of election, judges and justices of the courts, statewide elected executive officials, and members of the General Assembly.

At the time of the vote, there were several circumstances which arose among the members with respect to their recent elections and those of family members. For example, members had been re-elected to their current seat, or elected to a seat in the opposite House or to a county or judicial position receiving a pay increase. There were also situations where a member's spouse, child, parent, or sibling had been elected to a position receiving an increase in compensation. Because of the inevitability of future pay increase legislation, the Committee would like to provide some guidance.

Consideration of the Issues

Increase for the Member

First the Committee shall address a member's ability to vote where the member has been elected or re-elected to a position receiving an increase. Although not binding, there is a persuasive case from the Stark County Court of Appeals which discusses a post-election, pre-term pay increase voted on by city council members. In Coleman v. City of Canton, 1998 WL 401026, No. 1997CA00303 (5th Dist. Ct. App., Stark, 5-4-98) the Court specifically addressed the application of R.C. 102.03(D) and (E) to these types of increases. In deciding that a pay increase does not fall within the confines of R.C. 102.03(D) and (E), the Court held:

There are no allegations, in this case, that the pay raise would be a substantial and improper influence with respect to the performance of their duties as city council members. The language of the statute refers to actions that result in personal gain to the council member by the act of accepting a gift or something of value that may affect or influence the council member's votes or actions for the benefit of the donor rather the general good of the residence of the city.

The most blatant example would be bribery as set forth in this section of the statute. However, such conduct could include the acceptance of a gift or something of value without the intent required for bribery.

We do not find, through a plain reading of the statute, that voting on a pay raise pre-term, post-term, or in-term is covered by the statute in question. The act of voting a pay raise, even for the benefit of oneself, cannot be considered the acceptance of something of value that will influence one's public actions, substantially, improperly or otherwise. It is the act of a pay raise and the potentially self-serving nature of it that may be found to be offensive but not pursuant to this statute. The voters will have the ultimate say as to the propriety of the timing of the pay raise. (emphasis added)

The Committee finds the reasoning in the Canton case to be sound. Therefore, based upon the above ruling, the Committee holds R.C. 102.03 does not prohibit a member of the General Assembly from voting on a pay increase bill where the member has been elected or re-elected to a position receiving an increase in compensation pursuant to the bill.

Increase for a Family Member

R.C. 102.03(D) and (E)

The Committee has consistently held that a member is not only prohibited from securing something of value for themselves, but also from securing a thing of value for someone else. In Advisory Op. 95-006 at page 4, the Committee stated:

R.C. 102.03(D) prohibits a public official or employee from using his official authority or influence to secure anything of value, either for himself or for any other party, if the thing of value is of such a character as to manifest a substantial and improper influence upon him with respect to his official duties by impairing his objectivity and independence of judgment as a public official or employer. Therefore, the member should avoid taking any actions that would result in their membership in the General Assembly being used to secure anything of value or the promise of anything of value....

However, at least with respect to an increase in compensation, since R.C. 102.03(D) and (E) do not prohibit the member themselves, it would appear this rational would extend to family

members of the General Assembly member as well. Therefore, where a family member will receive the pay increase, R.C. 102.03 does not prohibit the member from voting on the bill. It should be noted that this applies not only to those family members that have already been elected or currently hold the position, but also to those family members that will be elected, appointed, or hired in the future. However, those family members should contact the Ohio Ethics Commission for advice and information.

R.C. 2921.42(A)(1)

In addition to R.C. 102.03, the Committee must also consider R.C. 2921.42 in determining the ability of a member to vote for an increase in compensation for a family member. Division (A)(1) of Section 2921.42 of the Revised Code reads as follows:

(A) No public official shall knowingly do any of the following:

(1) Authorize, or employ the authority or influence of his office to secure authorization of any public contract in which he, a member of his family, or any of his business associates has an interest.

Pursuant 2921.42(G)(1)(a), "Public contract" means "the purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of the state... *including the employment of an individual by the state...*"

Generally, R.C. 2921.42(A)(1) prohibits a member from voting or participating in any part of the General Assembly's decision-making process by authorizing or approving an *individual* contract of employment for a member of his or her family. Also, this Division prohibits a member from using his or her "authority or influence" to secure the authorization of a public contract in which a member of his or her family has an interest. Moreover, this prohibition extends beyond the initial hiring of a family member and prohibits a member from participating in a decision that would affect the terms and conditions, such as an increase in compensation, of an *individual* contract of employment for a member of his or her family.

The Committee has held that in order for the interest to be prohibited under R.C. 2921.42, it must be definite and direct. See Advisory Ops. 95-006, 97-004 and 00-001. The above

prohibitions addressed situations where an *individual* employment contract was modified; there was a definite and direct impact on the family member only. The situation is different where the pay increases are across-the-board, include an entire class of employees or elected officials, and the pay increase uniformly affects the compensation of all persons in each of the positions.

Under these circumstances, the employee would not have a sufficiently definite and direct interest in the compensation established for an entire class of employees. Therefore, R.C. 2932.42 would not prohibit a member of the General Assembly from voting on a bill which increased the compensation of a class of employees or officials in which a family member just happened to also be a member of that class.

However, the members are reminded that the increase must uniformly affect the compensation of the entire class and the family member's compensation cannot be disproportionate or differentially treated. See Advisory Ops. 95-014 and 95-015.

Conclusion

Accordingly, the Committee finds, and the members and employees of the General Assembly are so advised (1) R.C. 102.03(D) and (E) do not prohibit a member of the General Assembly from voting on a bill to increase the compensation of a position to which the member has been elected or re-elected, but has not yet taken office; (2) R.C. 102.03(D) and (E) do not prohibit a member of the General Assembly from voting on a bill to increase the compensation of a position to which a family member has been elected, re-elected, appointed, or hired; and (3) R.C. 2921.42 does not prohibit a member of the General Assembly from voting on a bill to increase the compensation of a position to which a family member has been elected, re-elected, appointed, or hired where an entire class of employees/officials has received an increase.

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.

/s/

Richard H. Finan, Chairman
Joint Legislative Ethics Committee