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THE JOINT LEGISLATIVE ETHICS COMMITTEE

Advisory Opinion 98-001
February 5, 1998

Syllabus by the Committee:

- (1) R.C. 101.26 does not prohibit a member of the General Assembly from being employed by a state institution of higher education as a professor;
- (2) R.C. 102.03(H) does not prohibit a member of the General Assembly from receiving compensation for classroom teaching at institutions of higher education;
- (3) R.C. 102.031(B) does not prohibit a member of the General Assembly who is employed by an institution of higher education, as a professor, from voting on legislation that is being actively advocated by the college or university.

Jurisdiction and Question Presented

Pursuant to sections 101.34 and 102.08 of the 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 question: May a member of the General Assembly be employed as a professor at a state college or university?

Background

The member wishes to accept a position as a professor with a state institution of higher education. The position has no additional duties or responsibilities other than those associated with teaching. Moreover, the position does not involve a substantial and material exercise of administrative discretion in the formulation of public policy, expenditure of public funds, enforcement of laws and rules of the state or a county or city, or execution of other public trusts.

Consideration of the Issues

R.C. 101.26

This Committee has previously held that although it has no authority to provide immunity for violations of section 101.26 of the Revised Code and may do so only with respect to Chapter 102. and sections 2921.42 and 2921.43 of the Revised Code, it does have authority to advise members on potential conflicts of interest and therefore has jurisdiction to address R.C. 101.26. Section 101.26 of the Revised Code reads in pertinent part as follows:

No member of either house of the general assembly except in compliance with this section, shall knowingly do any of the following:

(A) Be appointed as trustee, officer, or manager of a benevolent, educational, correctional institution that is authorized, created, or regulated by the state and that is supported in whole or in part by funds from the state treasury;

* *

Any appointee, officer, or employee described in division (A), (B), or (C) of this section who accepts a certificate of election to either house immediately shall resign from the appointment, office, or employment, and, if he fails or refuses to do so, his seat in the general assembly shall be deemed vacant. Any member of the general assembly who accepts any appointment, office, or employment described in division (A), (B), or (C) of this section immediately shall resign from the general assembly, and, if he fails or refuses to do so, his seat in the general assembly shall be deemed vacant. *This section does not apply to members of either house of the general assembly serving an educational institution of the state, supported in whole or in*

part by funds from the state treasury, in a capacity other than one named in division (A) of this section, school teachers, employees of boards of education, notaries public, or officers of the militia. Division (A) of this section does not apply to any member of either house of the general assembly appointed as trustee, officer, or manager of a private institution that only receives funds from the state treasury in exchange for services rendered. (Emphasis added.)

In order for the prohibition found in R.C. 101.26 to be applicable, the member must be appointed as *trustee, officer, or manager*. In this situation, the member wishes to be employed as a professor at an educational institution, a position with no additional duties or responsibilities other than those associated with teaching. A professorship cannot be considered to be a trustee, officer, or manager position. Furthermore, R.C. 101.26 states that the prohibition does not apply to members of the General Assembly serving an educational institution of the state, supported in whole or in part by funds from the state treasury, in a capacity other than as trustee, officer, or manager. Accordingly, R.C. 101.26 does not prohibit a member of the General Assembly from being employed by a state institution of higher education as a professor.

R.C. 102.03(H)

With the passages of Am. Sub. H.B. 492, the acceptance of a payment made in consideration of any speech given was prohibited. R.C. 102.03(H) states in part:

No public official or employee, ... who is required to file a financial disclosure statement under section 102.02 of the Revised Code shall solicit or accept, and no person shall give to that public official or employee, an honorarium.

For purposes of R.C. 102.03(H), honorarium is defined as "any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or similar gathering." R.C. 102.01(H). The issues becomes whether compensation received as consideration for teaching classes at institutions of higher education falls within the definition of honorarium as provided in R.C. 102.01(H).

In addressing this issue, the Board of Commissioners on Grievances and Discipline in Opinion Number 94-12 held that R.C. 102.03(H) did not prohibit a judge from accepting compensation for teaching at colleges and universities on topics related to the law, the legal system, or the administration of justice. The Board held:

[T]eaching and speaking are not necessarily identical activities. In fact, the words "teach" and "speak" are not synonyms. To teach is to impart knowledge and skill. To speak is to engage in spoken exchange. See e.g., *Roget's II The New Thesaurus* 878, 939 (1980).

Teaching at a state or private university or college is an activity intended to impart knowledge and skill. The courses taught are part of a planned educational process. Academic goals are defined. Academic credit is offered and must be earned. Students enroll in the courses to earn credit and reach academic goals. Instructors must be qualified to teach the subject matter presented. Instructors perform various duties such as planning lessons, giving lectures, guiding discussions, administering tests, performing evaluations, and remaining available for consultation if needed beyond the classroom hours. In contrast, a speaking activity is characteristically a singular or isolated event, not part of a planned educational process. Academic credit is not offered or earned. Students are not enrolled in order to earn credit and reach goals. A speaker's duties are usually limited to preparation and delivery of the speech.

The Committee agrees with this description of what may constitute teaching. However, the Committee would further delineate the difference between speaking and teaching. There may be instances where "teaching" is more akin to giving an address. For example, certain occupations are required to complete continuing education in order to maintain a license. It would appear that programs established to provide continuing education are part of a planned educational process for which those attending receive credit. However, a person who gives a presentation at a continuing education seminar of relatively short duration would not be involved in activities between teacher and student; rather, the presentation is a singular or isolated event. A person who engages in this type of activity makes a speech which would fall within the definition of honorarium as defined in R.C. 102.01(H) and would therefore be prohibited from accepting compensation for this type of activity.

Accordingly, R.C. 102.03(H) does not prohibit a member of the General Assembly from receiving compensation for classroom teaching at institutions of higher education.

R.C. 102.031(B)

Lastly, where the particular college or university is an Employer of a Legislative Agent, this necessarily involves R.C. 102.031(B) which provides:

(B) No member of the general assembly shall vote on any legislation that he knows is then being actively advocated if he is one of the following with respect to a legislative agent or employer that is then actively advocating on that legislation:

(1) An employee;

(2) A business associate;

(3) A person, other than an employee, who is hired under contract to perform certain services and such position involves a substantial and material exercise of administrative discretion in the formulation of public policy.

Thus, in accordance with R.C. 102.031(B), there are three types of relationships with an employer that may affect a member's ability to vote: (1) an employee; (2) a business associate; or (3) an administrative position. For purposes of R.C. 102.031(B), "employee" does not include a member of the General Assembly whose non-legislative position of employment does not involve the performance of or the authority to perform administrative or supervisory functions or whose nonlegislative position of employment, if he is a public employee, does not involve a substantial and material exercise of administrative discretion in the formulation of public policy, expenditure of public funds, enforcement of laws and rules of the state or a county or city, or execution of other public trusts. R.C. 102.031(A)(4). Based upon this definition and the facts presented, the member would not be an employee of the college or university as that term is defined. *See* Advisory Op. 95-013.

Furthermore, the member would not be a "business associate" of the college or university. "Business associate" is defined as a person with whom a member of the General Assembly is

conducting or undertaking a financial transaction. R.C. 102.031(A)(2). This Committee has previously held that the definition of financial transaction encompasses only those types of business relationships that involve joint or part ownership in an enterprise, as opposed to a simple contractual relationship between two entities for services. See Advisory Op. 95-013, page 4.


Lastly, the member would not be in an administrative position since the position of professor does not involve a substantial and material exercise of administrative discretion in the formulation of public policy.

Accordingly, a member who is engaged as a professor at a state institution of higher education does not fall within the purview of R.C. 102.031(B) and is therefore not prohibited from voting on any legislation that is being actively advocated by the college or university.

This written 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.

Conclusion

Accordingly, the Committee finds and the members and employees of the General Assembly are so advised that (1) R.C. 101.26 does not prohibit a member of the General Assembly from being employed by a state institution of higher education as a professor; (2) R.C. 102.03(H) does not prohibit a member of the General Assembly from receiving compensation for classroom teaching at institutions of higher education; (3) R.C. 102.031(B) does not prohibit a member of the General Assembly who is employed by an institution of higher education, as a professor, from voting on legislation that is being actively advocated by the college or university.


Richard H. Finan, Chairman
Joint Legislative Ethics Committee