

December 29, 1997

OPINION NO. 97-061

The Honorable Thomas F. Grennan
Brown County Prosecuting Attorney
200 East Cherry Street
Georgetown, Ohio 45121

Dear Prosecutor Grennan:

We have received your request for an opinion on the issue whether an individual who is a student in a local school district may serve as a member of the board of education of that school district. You have asked the following questions:

1. Is the position of student within a school district incompatible with the elected office of school board member for the same school district?
2. Is a student within a local school district a qualified candidate for the position of Board of Education of that school district?
3. Is a student within the local school district, if elected, qualified to take his office as a member of the Board of Education for the same school district?
4. If the positions of student and school board member within the same school district are incompatible, and if a student should be elected to the position, does this create a vacancy that would be filled by appointment pursuant to Section 3313.11 of the Ohio Revised Code?
5. If the student were to be elected, would he take office until challenged or could the school board refuse to allow him to take his office and require him to challenge the issue?

In the situation with which you are concerned, a high school senior ran for the office of member of the board of education of the local school district whose schools he attends, and he won the election. The student was eighteen years of age and otherwise qualified to run for the office.

You are asking whether the student is permitted to serve as a school board member and, if not, what procedure should be followed.

By statute, in order to be elected as a member of a local school district, one must be an elector residing in the territory composing the district. R.C. 3313.01. An "elector" is a citizen of the United States who is age eighteen or over, who has been a resident of the state thirty days immediately preceding the election, who is a resident of the county and precinct in which the citizen offers to vote, and who has been registered to vote for thirty days. R.C. 3503.01. You have indicated that the individual in question met these requirements.

Before entering upon the duties of member of a board of education, an individual must take an oath to support the Constitution of the United States and the Constitution of Ohio and to "perform faithfully the duties of his office." R.C. 3313.10. It appears that the individual in question will be able to meet this requirement. Thus, we have no reason to doubt that the individual was a qualified candidate and will be able to qualify to take the office of member of the board of education.

Your primary concern is whether there is an incompatibility between the position of student and the elected office of school board member that prohibits an individual from serving as a member of the board whose schools he attends, or whether there is some other reason why such an individual may not take or hold the office of school board member. In order to decide questions of compatibility, it is necessary to look both at provisions of statute and rule and also at common law principles.

Various statutory provisions may affect the capacity of an individual to accept a particular public position. For example, R.C. 124.57 prohibits certain types of political activity by officers or employees in the classified service. That provision is not applicable in the instant case because neither the position of school board member nor the role of a student is in the classified service. *See* R.C. 124.11.

Similarly, local charter provisions or ordinances or federal, state, or local departmental regulations may impose restrictions on the individuals who can hold particular public positions. *See, e.g.,* 1989 Op. Att'y Gen. No. 89-037; 1979 Op. Att'y Gen. No. 79-111. No such provisions apply in the instant case.

Our research has disclosed no statutory provision that prohibits a student from serving on the school board. There are statutory restrictions on who may serve on a board of education, but they do not prevent students from serving. *See* R.C. 3313.13 (prohibiting a prosecuting attorney or city director of law from being a member of a board of education); *see also* R.C. 3313.70 (prohibiting a member of the board of education from being appointed as school physician, school dentist, or school nurse).

The common law principle governing compatibility was set forth in the following language: "Offices are considered incompatible when one is subordinate to, or in any way a check upon, the other; or when it is physically impossible for one person to discharge the duties of both." *State ex*

rel. Attorney Gen. v. Gebert, 12 Ohio C.C. (n.s.) 274, 275 (Cir. Ct. Franklin County 1909); *see also State ex rel. Baden v. Gibbons*, 17 Ohio L. Abs. 341, 344 (Ct. App. Butler County 1934) ("[i]t has long been the rule in this state that one may not hold two positions of public employment when the duties of one may be so administered and discharged that favoritism and preference may be accorded the other").

This test is applicable to public offices and also to positions of employment in the public service. *See, e.g., State ex rel. Hover v. Wolven*, 175 Ohio St. 114, 191 N.E.2d 723 (1963) (one person cannot simultaneously serve as a member of a county board of education and as a member of a local school district board of education in that county); 1992 Op. Att'y Gen. No. 92-055 (the positions of member of a board of education of a county school district and substitute teacher in a local school district located within the county school district are incompatible); 1984 Op. Att'y Gen. No. 84-003, at 2-4 (syllabus) ("[t]he positions of teacher's aide in a local school district and member of the county board of education in the same county are incompatible"); 1979 Op. Att'y Gen. No. 79-099 (a teacher who has been a disability retirant under R.C. 3307.44 for less than five years may not serve on the board of education without resigning and waiving rights to be restored to the former position should disability cease); 1973 Op. Att'y Gen. No. 73-108, at 2-412 (syllabus) ("[t]he positions of teacher in a local school district and member of the board of education of another local school district within the same county school district are compatible").

The common law test of incompatibility, however, is applicable only when both positions under consideration are in the public service. *See, e.g.,* 1989 Op. Att'y Gen. No. 89-105; 1989 Op. Att'y Gen. No. 89-037; 1981 Op. Att'y Gen. No. 81-078; 1979 Op. Att'y Gen. No. 79-111; 1979 Op. Att'y Gen. No. 79-099; 1973 Op. Att'y Gen. No. 73-016. If a private position is involved, the appropriate test is whether there exists a conflict of interest, and whether that conflict is so pervasive that it precludes an individual from holding both positions. *Id.*

Our research has disclosed no authority addressing the question whether conflict of interest prevents a high school student from holding the position of school board member. It is clear that a student who serves on a board of education will face situations in which action by the board will affect the students. For example, a board of education may adopt rules governing the pupils of its schools, and each student will be subject to those rules. R.C. 3313.20. Further, the board of education employs the superintendent and other administrators and also the teachers of the district, and some of those individuals will have authority over the student. *See* R.C. 3319.01; R.C. 3319.02; R.C. 3319.07.

It does not appear, however, that potential conflicts of this type are sufficient to prevent a student from holding the office of school board member. By statute, an individual under age twenty-two is entitled to attend the public schools until the individual successfully completes an appropriate educational program. R.C. 3313.64(B); R.C. 3321.03. The statutes do not abrogate this right for an individual who is elected to a board of education, and we are not inclined to read such a condition into the statutes. *See generally, e.g., State ex rel. Corrigan v. Hensel*, 2 Ohio St. 2d 96, 96, 206 N.E.2d 563, 564 (1965) (syllabus) ("[a] person...will not be ousted from...elected office [as a member of a local board of education] by quo warranto, on the ground that by reason of his private

occupation he *might possibly or could* secure personal monetary benefits by using his public office in a wrongful manner, it being established by the evidence that said person had not committed, nor was he about to commit, any act or acts in violation of law or violative of his oath of office"); 1985 Op. Att'y Gen. No. 85-099, at 2-417 (syllabus) ("an individual may serve as county auditor even though his son is a member of a board of education of a city school district within the same county").

Rather, it appears that a student who serves on a board of education may, in fulfilling the oath of office, "perform faithfully the duties of his office" by declining to act in situations in which a conflict of interest appears. R.C. 3313.10; *see, e.g.*, 1970 Op. Att'y Gen. No. 70-131, at 2-254 ("[s]hould a public officer find himself in a situation that requires him to pass upon his acts committed while he held a former position, he could, of course, exercise...sound judgment and intelligent discretion and abstain from passing upon his own acts if to do so would be inconsistent with his current position"); *see also* 1983 Op. Att'y Gen. No. 83-037, at 2-141 ("this office must assume, in the absence of evidence to the contrary, that all parties are acting in good faith, and in accordance with the law").

For example, it would clearly be inappropriate for a student to participate in school board activity concerning a matter of his own discipline. *See, e.g.*, R.C. 3301.121; R.C. 3313.66; R.C. 3313.662. Similarly, the student could not properly take action that would provide particular benefit or detriment to one of his teachers. *See, e.g.*, R.C. 3319.08; R.C. 3319.11-.111; R.C. 3319.16. A school board has a wide variety of responsibilities, however, and a student would be able to participate in those that do not impact directly upon his own situation.

For these reasons, a high school student is not precluded from holding the position of member of the board of education of the district whose schools the student attends. There are, however, several statutes that restrict the action that an individual may take as a member of the board of education.

Several provisions of statute prevent a school board member from taking action that would benefit him personally, and a student school board member, like any other school board member, is subject to the provisions of those statutes. The Ohio Ethics Law prohibits the use of official influence for personal gain and also includes a revolving door provision governing actions after an individual's public service has ceased. R.C. 102.03. In particular, a public official or employee is prohibited from using 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." R.C. 102.03(D).

Criminal provisions prohibit unlawful interests in public contracts or the receipt of improper compensation. R.C. 2921.42; R.C. 2921.43; *see, e.g.*, Ohio Ethics Commission, Advisory Op. No. 88-007. The statutes prohibit the use of official influence to obtain contracts that benefit a public officer or his family, and provide exceptions for certain situations in which the public officer does not participate. R.C. 2921.42.

Other provisions governing contracts of a board of education appear in R.C. 3313.33, which states that "[n]o member of the board shall have, directly or indirectly, any pecuniary interest in any contract of the board or be employed in any manner for compensation by the board of which he is a member." *See, e.g.*, 1989 Op. Att'y Gen. No. 89-030. Certain exceptions apply to benefit plans and small-percentage stockholders. R.C. 3313.33.

R.C. 3319.21 provides further that, if a member of a board of education acts in a matter in which he is pecuniarily interested, the act is void. Similarly, a teaching contract with certain relatives of a board member is void if the member votes for or participates in the making of the contract. R.C. 3319.21.

The Ohio Ethics Commission has authority to render advisory opinions relating to particular circumstances involving ethics, conflict of interest, or financial disclosure under R.C. Chapter 102, R.C. 2921.42, or R.C. 2921.43. R.C. 102.08(B). Those opinions provide an individual with immunity from criminal prosecutions, civil suits, or actions for removal. *Id.* Thus, if a school board member has questions concerning the permissibility of particular actions under R.C. Chapter 102, R.C. 2921.42, or R.C. 2921.43, the member may seek guidance from the Ohio Ethics Commission.

We conclude, therefore, that a high school student who is elected to the board of education of the school district whose schools he attends is permitted to serve as a member of the board of education, subject to applicable statutes governing conflicts of interest. In reaching this conclusion, we are protecting the right of the electorate to be represented by the individual selected at the election. Possible conflicts between the position of student and the office of school board member are evident to the voters. By electing the individual in question, they have placed their trust in a candidate who is a student. Our research has disclosed no rule of law clearly prohibiting that individual from serving. *See generally State ex rel. Lease v. Turner*, 111 Ohio St. 38, 45, 144 N.E. 599, 601 (1924) ("[t]he law does not look with favor upon declaring a forfeiture in an office to which one has been elected in a legal manner" and "[declaring such forfeiture] would subvert the will of the people as expressed in their selection of those whom they desire to act in public office to which they have elected them"); 1985 Op. Att'y Gen. No. 85-099.

The fact that a student who serves on a board of education may be in a position to take action that affects him as a student should not bar his service on the board. That actions of government affect the governed is basic to our form of government. For example, a mayor has authority over individuals who plow his street and pick up his garbage, but his interest as a citizen does not preclude his proper actions as mayor. Obtaining personal profit or gain from the exercise of a public office is prohibited by statute, but there is no prohibition against securing benefits that are made generally available to the citizenry. Thus, to the extent that a student school board member acts for the public good, there is no prohibition against that student benefiting from improvements to the school system.

In concluding that it is permissible for a student to serve as a school board member, we look at the analogy of a parent who serves as a school board member. A parent is the natural guardian of his or her child and has the legal duty of supporting the child and protecting the child's rights. *See,*

e.g., R.C. 2151.011(B)(17), (41); R.C. 3103.03; R.C. 3109.03. A parent who serves on a school board could have an interest in favoring his or her child's school, principal, or teachers, or in taking action against district employees who do not meet the parent's expectations. Nonetheless, it is common for parents to serve on boards of education. Their relationship with the schools provides them with an interest in performing their duties well, and personal benefits are limited by applicable statutory provisions and by the ability to abstain in particular situations.

It is of interest that students are expressly permitted to serve as trustees of the state universities. *See* R.C. 3335.02; R.C. 3337.01; R.C. 3339.01; R.C. 3341.02; R.C. 3343.02; R.C. 3344.01; R.C. 3352.01; R.C. 3356.01; R.C. 3359.01; R.C. 3360.01; R.C. 3361.01; R.C. 3362.01. The student trustees are not permitted to vote, are not included in determining a quorum, and are not entitled to attend executive sessions of the board. *Id.* Student trustees are expressly prohibited from using their trusteeships to influence any grade or other evaluation by a member of the faculty or other university employee, and faculty and other employees are prohibited from conferring "any favor, advantage, preference, or other benefit" on student trustees because of their trusteeships. R.C. 3345.34. A student trustee's interest in the institution and its operation is the reason for permitting the student to participate on the board. Thus, the General Assembly has recognized that individuals who are enrolled in an educational institution may reasonably be involved in the operation of the institution. The participation of a student on a local board of education may have similar positive effects.

Because we have concluded that a high school student who is elected to the board of education may serve in that position, it is unnecessary to address your other questions.

The Honorable Thomas F. Grennan

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For the reasons discussed above, it is my opinion and you are advised, that a high school student who is elected to the board of education of the school district whose schools he attends is permitted to serve as a member of the board of education, subject to applicable statutes governing conflicts of interest.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

December 29, 1997

The Honorable Thomas F. Grennan
Brown County Prosecuting Attorney
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Georgetown, Ohio 45121

SYLLABUS:

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