

OPINION NO. 90-062**Syllabus:**

A principal of an elementary school who is employed by the school board of a city school district pursuant to R.C. 3319.02 is an employee of a governmental agency within the meaning of R.C. 3357.05 and is, therefore, ineligible to hold the position of trustee on the board of trustees of a technical college district.

To: Edward L. Florak, President, Jefferson Technical College, Steubenville, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, September 7, 1990

I have before me your request for my opinion regarding the eligibility of an individual to be a member of the board of trustees of your college. Your question concerns the effect of the qualification requirements of R.C. 3357.05.

I note first with respect to this question that my authority in rendering legal advice to a technical college district is defined by R.C. 3357.02 as giving legal advice in matters relating to its powers and duties. I am unable, however, to use the opinion rendering function of this office to make findings of fact or determinations as to the rights of particular individuals. *See generally* 1986 Op. Att'y Gen. No. 86-039 at 2-198; 1983 Op. Att'y Gen. No. 83-087 at 2-342 ("[t]he determination of particular parties' rights is a matter which falls within the jurisdiction of the judiciary..."); 1983 Op. Att'y Gen. No. 83-057 at 2-232 ("[t]his office is not equipped to serve as a fact-finding body; that function may be served by your office or, ultimately, by the judiciary"). Further, this office is not authorized to exercise on behalf of other state officials discretion which has been delegated to them. *See generally* 1985 Op. Att'y Gen. No. 85-007; 1984 Op. Att'y Gen. No. 84-098 at 2-333. I am, therefore, in discussing these questions, considering whether, under the general principles of law that are applicable, the position identified in your question falls within the meaning of the terms used in R.C. 3357.05, and am not making findings concerning the eligibility of particular individuals. *See generally* 1986 Op. Att'y Gen. No. 86-091.

R.C. 3357.05, governing appointments to the board of trustees of a technical college district, states that "[a]ppointees shall be qualified electors residing in the technical college district and *shall not be employees of any governmental agency.*" (Emphasis added.) Specifically, you wish to know whether an individual who holds the position of principal of an elementary school in a city school district is an employee of a governmental agency within the meaning of R.C. 3357.05.¹

The position of principal is an administrative position which is subject to appointment by the board of education of a city school district pursuant to R.C. 3319.02. The duties of this position are controlled by the terms of the principal's contract with the school board, which is referred to throughout R.C. 3319.02 as a contract of employment. R.C. 3319.02 states, *inter alia*, that "[t]he board of education shall execute a written contract of *employment* with each assistant superintendent, principal, assistant principal, and other administrator it *employs or reemploys*" and that "[t]he contract shall specify the *employee's* administrative position and duties, the salary and other compensation to be paid...." R.C. 3319.02(C) (emphasis added). Clearly, a principal of an elementary school is an employee of the school board. Therefore, I must examine whether a school board is a governmental agency.

School districts have long been recognized as political subdivisions of the state in their own right. *See, e.g., City of Cleveland v. Public Library Board*, 94 Ohio St. 311, 316, 114 N.E. 247, 249 (1916) ("the City of Cleveland and the City School District...are nevertheless separate and distinct political subdivisions"); *Cline v. Martin*, 94 Ohio St. 420, 426, 115 N.E. 37, 38 (1916) ("[s]uch [school] boards are agencies of the state"); 1955 Op. Att'y Gen. No. 5252, p. 240. I note that the term "governmental agency" is not defined in R.C. 3357.05. Political subdivisions, however, are included within the meaning of the term "governmental agency" when it is defined for other purposes throughout the Revised Code. *See, e.g.,* R.C. 154.01(E); R.C. 166.01(E); R.C. 351.01(B); R.C. 1551.01(A); R.C. 1551.30(D). *See also* 1972 Op. Att'y Gen. No. 72-035 (syllabus) ("[a] political subdivision of the State is a limited geographical area wherein a public *agency* is authorized to exercise some governmental function") (emphasis added); *accord* 1989 Op. Att'y Gen. No. 89-063 at 2-274; 1979 Op. Att'y Gen. No. 79-018 at 2-59. I conclude, therefore, that a school board, as the governing body of a school district, is a governmental agency as that term is commonly understood. *See generally Baker v. Powhatan Mining Co.*, 146 Ohio St. 600, 67 N.E.2d 714 (syllabus, paragraph three) (1946) (absent statutory definition, words are to be interpreted according to their common meaning). Thus, a principal of an elementary school who is employed by the board of education of a city school district is an employee of a governmental agency within the meaning of R.C. 3357.05.

I note that R.C. 3357.05 also prohibits members of a board of education from being appointed to the board of trustees of a technical college district. I am unable to infer from this provision, however, that employees of a board of education are to be excepted from the prohibition. The language prohibiting employees of governmental agencies has been part of R.C. 3357.05 since 1963. *See* 1963 Ohio Laws 810 (Am. S.B. 326, eff. Oct. 8 1963).² The prohibition against members of a

¹ R.C. 3357.05 establishes the initial qualifications for service on the board of trustees. If a prospective board member meets these standards, it is still necessary to determine whether other factors may affect eligibility, including such factors as subordination, physical impossibility, conflict of interest, or other applicable statutes, ordinances or regulations. *See generally* 1979 Op. Att'y Gen. No. 79-111. R.C. 3357.05, however, represents a legislative determination that employees of a governmental agency are *per se* ineligible to serve on the board, even though, absent the statutory bar, not all such positions would be considered incompatible.

² I note that prior to 1963, the provisions of R.C. 3357.05, which governed what were then designated as technical institute districts, contained no prohibition against employees of governmental agencies being appointed to the board of trustees of such districts. *See* 1961 Ohio Laws 528, 536-37 (Am. Sub. S.B. 519, eff. Oct. 20, 1961).

board of education serving on the board, however, was added in 1978. *See* 1977-78 Ohio Laws 2583 (Am. H.B. 399, eff. Jan. 13, 1978). As explained by my predecessor in 1978 Op. Att'y Gen. No. 78-048, prior to the enactment of Am. H.B. 399, board of education members were eligible to serve as trustees, because they are public officers rather than employees. Thus, the added language serves only to narrow the class of public officers who may serve as trustees and has no qualifying effect on the preexisting prohibition against employees.

It is, therefore, my opinion and you are hereby advised that a principal of an elementary school who is employed by the school board of a city school district pursuant to R.C. 3319.02 is an employee of a governmental agency within the meaning of R.C. 3357.05 and is, therefore, ineligible to hold the position of trustee on the board of trustees of a technical college district.