

OPINION NO. 76-019

Syllabus:

1. The provisions of R.C. 2921.42 do not prohibit public school administrators and employees involved in driver training programs pursuant to R.C. 3301.17 from being employed by, involved in the operation of, or holding an interest in a commercial driver training facility;

2. R.C. 3301.17 does not authorize payment of funds by a local board of education to a commercial driver training facility prior to the actual receipt of such funds from the state department of education.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: William J. Brown, Attorney General, March 17, 1976

I have before me your request for my opinion which reads as follows:

"1. May a duly certificated teacher, who is employed by a public board of education as a driver education teacher, lawfully accept concurrent employment with a commercial driver training school which is licensed under R. C. Chapter 4508, in view of the fact that public funds may be used to subsidize driver education in commercial schools only when the public schools can certify under R.C. 3301.17 that driver education is not readily available to certain high school students?

"2. May a school administrator, employed by a public board of education and also holding a license to operate a commercial driver training school, or having other financial interest in such a commercial school, lawfully enroll high school students in the commercial school and receive a state subsidy therefore?

"3. Does R.C. 3301.17 permit a public school board of education to pay a state subsidy to a commercial driver training school before the funds for such a subsidy have been paid by the state department of education to the public board of education."

Your first two questions express concern over possible conflicts of interest. R.C. Chapter 2921, particularly R.C. 2921.42, prohibits a public official from being directly or indirectly interested in a public contract. R.C. 2921.42 provides in pertinent part:

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

"(1) Authorize, or employ the authority or influence of his office to secure author-

ization of any public contract in which he, a member of his family, or any of his business associates has an interest;

"(2) Authorize, or employ the authority or influence of his office to secure the investment of public funds in any share, bond, mortgage, or other security, with respect to which he, a member of his family, or any of his business associates either has an interest, is an underwriter, or receives any brokerage, origination, or servicing fees;

"(3) During his term of office or within one year thereafter, occupy any position of profit in the prosecution of a public contract authorized by him or by a legislative body, commission, or board of which he was a member at the time of authorization, and not let by competitive bidding, or let by competitive bidding in which his is not the lowest and best bid;

"(4) Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which he is connected;

"(5) Have an interest in the profits or benefits of a public contract which is not let by competitive bidding when required by law, and which involves more than one hundred fifty dollars."

In order to resolve your first two questions, two issues must be resolved: first, whether a public contract is involved where a private commercial driving school receives state funds subsidy for educational services rendered to students and, second, whether a certificated teacher or a school administrator is a public official. Unless there is a public contract which will directly or indirectly benefit a public officer, R.C. 2921.42 will not serve to preclude a teacher from private employment with a commercial driving school, or to preclude a school administrator from having a financial or operating control interest in a commercial driving school.

As developed in the following analysis it is my opinion that subsidies paid to commercial driving schools, pursuant to R.C. 3301.17, are not paid pursuant to public contracts even though the payment is ultimately made from public funds. Therefore, there is no conflict of interest involved in the situations described in your letter and it is not necessary to determine whether certified teachers and school administrators are public officials within the definitions of R.C. Chapter 2921.

R.C. 4501.07 creates a state treasury fund to be known as the "driver education fund." This fund is to be used to pay all or part of the costs of driver education training at high schools, or at commercial driving schools pursuant to R.C. 3301.07 and 3301.17. As stated in R.C. 3301.07, the use of such funds shall

be solely for the purpose of promoting highway safety through driver education.

Under R.C. 3301.17, it is the state department of education which is charged with the expenditure of funds for the purpose of promoting highway safety. The provisions for such expenditures are specified by R.C. 3301.17 as follows:

"The department of education shall expend state funds to provide driver education courses to any child enrolled in a high school for which standards are prescribed by the state board of education.

"Such driver education courses shall be provided in accordance with rules promulgated and enforced by the state board of education. The department of education shall contract for the use of public school facilities to provide driver education courses where practicable, or such courses may be provided at facilities established and operated, under the supervision of transportation coordinators, by the department of education. Whether the department of education contracts to use public school facilities or operates other facilities for driver education purposes, it shall expend an amount which shall not exceed fifty dollars times the number of pupils having enrolled in and completed the course.

"A commercial driver training school licensed under Chapter 4508. of the Revised Code shall receive a subsidy for each school age child who successfully completes the training school's course and who was unable to enroll in a driver education course conducted at high schools for which the state board of education prescribes minimum standards because such a course was not offered at the pupil's high school of attendance or because the pupil could not, due to scheduling difficulties avail himself of such a course during the semester or term of the pupil's sixteenth birthday or the immediately succeeding semester or term. For purposes of this section, a pupil shall be deemed to have scheduling difficulties if he is employed or engaged in traveling to or from his employment at the time the course is offered, or the principal of the pupil's high school of attendance determines that the pupil is involved in a hardship situation, or the principal of the pupil's high school of attendance determines that the driver education course conflicts with other courses which the pupil has scheduled at his high school. The inability or the unavailability of such a course shall be confirmed by a written statement to that effect on a form provided for the purpose by the state department of education and approved as to form by the auditor of state. The statement

shall be signed by the principal of the pupil's high school and submitted by the pupil to the operator of the commercial training school prior to the time the pupil enrolls in the training course. Each operator seeking reimbursement under this section shall submit such statements to the board of education of the pupil's school district of attendance. If the pupil attends a nonpublic school, the operator shall submit such statements to the public school board of education of the district in which the pupil's non-public school is located. No operator shall receive reimbursement for a pupil for whom he does not submit such a statement to the board of education as required by this section. A board of education shall pay to each such commercial driver training school out of funds paid to the district by the state board of education for the purpose an amount per student not to exceed the amount per student paid to public schools within the district under division (H) of section 3317.06 of the Revised Code.

"Such funds shall be used solely for the purpose of promoting highway safety through driver education."

(Emphasis added.)

It is clear from these provisions that the only contract which is authorized by this section is that which may occur between the state department of education and public school facilities. This, however, is but one of the options available to the department of education in carrying out its duty to provide driver education training to high school students. The department may also establish and operate its own training facilities under the supervision of transportation co-ordinators. In addition, as provided in the latter portions of the third paragraph quoted above, the department may expend these funds to reimburse licensed commercial driver training schools for providing training to students who are unable, as defined, to obtain this training through their public schools or non-public schools.

In essence, the subsidy which occurs under R.C. 3301.17 is a grant to the student of funds expended by the state department of education to provide driver education training as required by law. These expenditures are channeled through the local boards of education either on a contract basis or as a conduit for reimbursement of licensed commercial facilities. While certification by the public school principal is required in order for a public school student to obtain the subsidy for training through a commercial driving school (on the basis that this training is not available to him at his public school or that he is not able to avail himself of it under the statute), the principal issues this certificate to the student. Under the statutory plan, the principal does not enroll the student in a commercial training program. He does not authorize any contract at all, as the student is free to present this certificate to any licensed commercial driver training facility of his choice. Any contractual relationship which thereby arises is a private contract between the student and the licensed commercial driving school.

It is, therefore, my opinion that the reimbursement of licensed commercial driving schools pursuant to R.C. 3301.17 is not pursuant to a public contract. In response to your first and second questions, therefore, R.C. 2921.42 does not serve to preclude a teacher from private employment with a commercial driving school, or to preclude school administrators from having a financial or operating control interest in a commercial driving school.

In response to your question as to a local school board's authority to make payment to a commercial driver training school prior to receipt of such funds from the state department, I would reiterate that in the context of R.C. 3301.17, the local school board's role is that of a conduit between the state department and commercial driver training schools. The language of 3301.17 is clear and unambiguous:

"A board of education shall pay to each commercial driver training school out of funds paid to the district by the state board of education for the purpose an amount not to exceed the amount per student paid to public schools within the district under division (H) of R.C. 3317.06."
(Emphasis added.)

Under a well-settled rule of statutory construction, where a statutory enactment is plainly expressed, there is no room for construction. Slingluff v. Weaver, 66 Ohio St. 621, (1902). This provision for payment to a commercial driving school is clearly expressed. The local board of education acts as a conduit for state funds paid and I find no authority for payment to a licensed commercial driving school prior to the receipt of state funds or for any other "prior financing" arrangement.

It is, therefore, my opinion, and you are so advised, that:

1. The provisions of R.C. 2921.42 do not prohibit public school administrators and employees involved in driver training programs pursuant to R.C. 3301.17 from being employed by, involved in the operation of, or holding an interest in a commercial driver training facility;
- 2.. R.C. 3301.17 does not authorize payment of funds by a local board of education to a commercial driver training facility prior to the actual receipt of such funds from the state department of education.