November 6, 2017

The Honorable Nicholas A. Iarocci
Ashtabula County Prosecuting Attorney
25 West Jefferson Street
Jefferson, Ohio 44047

SYLLABUS: 2017-039

R.C. 3313.13 does not permit an assistant law director of the City of Conneaut to serve simultaneously as a member of the board of education of the Conneaut Area City School District when the law director of the City of Conneaut is the legal adviser and attorney for the board of education of the Conneaut Area City School District under R.C. 3313.35.

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OPINION NO. 2017-039

The Honorable Nicholas A. Iarocci
Ashtabula County Prosecuting Attorney
25 West Jefferson Street
Jefferson, Ohio 44047

Dear Prosecutor Iarocci:

We have received your request for an opinion whether R.C. 3313.13 permits an assistant law director of the City of Conneaut to serve simultaneously as a member of the board of education of the Conneaut Area City School District. You have explained that the Conneaut Area City School District does not utilize any legal services of the city law director's office and contracts with other private law firms for legal services.

R.C. 3313.13 provides:

> Except as otherwise provided in this section, no prosecuting attorney, city director of law, or other official acting in a similar capacity shall be a member of a board of education.
>
> An assistant prosecuting attorney may serve as a member of a board of education of a school district in any county other than the county in which the assistant prosecuting attorney is employed if the board of education's school district is not contiguous to the county in which the assistant prosecuting attorney is employed.
>
> A city director of law who was appointed to that position under a city charter, village solicitor, or other chief legal officer of a municipal corporation may serve as a member of a board of education for which the chief legal officer is not the legal adviser and attorney under [R.C. 3313.35]. A city director of law who was appointed to that position under a city charter may serve as a member of a board of education for which the city director of law is the legal adviser and attorney under [R.C. 3313.35], but only if the board uses no legal services of the office of the city law director or if the legal services of that office that it does use are performed under contract by persons not employed by that office. An employee of an appointed or elected city director of law may serve as a member of a board of education for which the city director of law is not the legal adviser and attorney under [R.C. 3313.35].

The first sentence in R.C. 3313.13 prohibits a prosecuting attorney, city director of law, or other official acting in a similar capacity from simultaneously serving as a member of a board of education of a city school district unless one of the exceptions set forth in R.C. 3313.13 applies. An assistant law director of the City of Conneaut is appointed by the city law director to perform duties that the city law director performs. *See* City of Conneaut Charter, Section IX-4 ("[t]he Director of Law shall appoint such assistants as are authorized by ordinance"); R.C. 733.51 ("[w]hen the legislative authority of the city allows assistants to the director of law, he may designate the assistants to act as prosecuting attorneys of the mayor's court"); *Thomas, Jr. v. Bd. of Comm'rs of Hamilton Cnty.*, 88 Ohio St. 489, 493, 104 N.E. 536 (1913) ("[t]he very purpose of having assistants to the [city] solicitor, or any other public officer, is to secure the participation by them in the performance of the duties of the office"). Accordingly, for the purpose of R.C. 3313.13, an assistant law director of the City of Conneaut is an official acting in a similar capacity as a city law director. *Cf.* 2004 Op. Att'y Gen. No. 2004-049, at 2-418 ("an assistant county prosecuting attorney acts in a similar capacity as the county prosecuting attorney, and, as such, is prohibited by R.C. 3313.13 from serving as a member of a board of education of a city school district"); 1979 Op. Att'y Gen. No. 79-100, at 2-311 (overruled, in part, on other grounds by 2008 Op. Att'y Gen. No. 2008-032) ("[a]n assistant city solicitor performs, under the supervision of the solicitor, all the duties of the solicitor"). Thus, unless one of the exceptions in R.C. 3313.13 applies, the law director or an assistant law director of the City of Conneaut may not serve as a member of the board of education of the Conneaut Area City School District.[1]

Turning to the exceptions that apply to a city law director and an assistant city law director, the third sentence of R.C. 3313.13 states "[a] city director of law who was appointed to that position under a city charter … may serve as a member of a board of education for which the [city law director] is not the legal adviser and attorney under [R.C. 3313.35]." This means that a city law director who was appointed under a city charter may serve as a member of a board of education for a school district that is not a city school district, or as a member of a board of education of a city school district for which the law director is not the legal adviser under R.C. 3313.35.

The fourth sentence of R.C. 3313.13 states "[a] city director of law who was appointed to that position under a city charter may serve as a member of a board of education for which the city director

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[1] Although the City of Conneaut has a charter and may exercise home rule powers under Ohio Const. art. XVIII, § 3, it is unnecessary for us to determine in this opinion whether a charter provision or ordinance may supersede R.C. 3313.13. No provision of the charter of the City of Conneaut expressly conflicts with R.C. 3313.13. Additionally, you have not provided us any information indicating that an ordinance or resolution has been adopted by the legislative authority of the City of Conneaut that expressly conflicts with R.C. 3313.13. We, therefore, presume that no such ordinances or resolutions exist. Accordingly, R.C. 3313.13 is applicable to a determination of whether the law director of the City of Conneaut may serve simultaneously as a member of the board of education of the Conneaut Area City School District.

of law is the legal adviser and attorney under [R.C. 3313.35], but only if the board uses no legal services of the office of the city law director or if the legal services of that office that it does use are performed under contract by persons not employed by that office." This means that a city law director appointed under a city charter, who is the legal adviser to the board of education of a city school district under R.C. 3313.35, may serve as a member of the board of education of that city school district if the board of education does not use the legal services of the city law director's office. Alternatively, if the board of education uses the legal services of the city law director's office and those legal services are performed, pursuant to a contract, by a person who is not employed by the city law director's office, a city law director may serve as a member of the board of education of the city school district for which the city law director is the legal adviser and attorney under R.C. 3313.35.

We now turn to the fifth sentence of R.C. 3313.13, which states "[a]n employee of an appointed or elected city director of law may serve as a member of a board of education for which the city director of law is not the legal adviser and attorney under [R.C. 3313.35]." This means that an employee of a city law director may serve as a member of a board of education of a school district that is not a city school district or of a city school district for which the city law director is not the legal adviser under R.C. 3313.35. The exception that appears in the fifth sentence of R.C. 3313.13 mirrors the exception in the third sentence of R.C. 3313.13 that applies to a city law director appointed under a charter.

The fifth sentence of R.C. 3313.13 applies to an "employee" of a city law director. "Employee" is not statutorily defined for purposes of R.C. 3313.13. Without a statutory definition of a word, the ordinary and common meaning of a word is utilized. *See* R.C. 1.42 (words "shall be read in context and construed according to the rules of … common usage"). An "employee" is "a person hired by another[.]" *Webster's New World College Dictionary* 477 (5th ed. 2014); *see also Merriam-Webster's Collegiate Dictionary* 408 (11th ed. 2005) (defining "employee" as "one employed by another usu[ally] for wages or salary and in a position below the executive level"). An assistant city law director is appointed by the city law director and serves under his direction and supervision. Even though an "employee" of a city law director may include persons other than an assistant city law director, such as administrative staff or other non-attorney personnel, R.C. 3313.13 applies to prosecuting attorneys, city law directors, and other officials acting in a similar capacity. R.C. 3313.13 addresses positions that require the person to be an attorney. *See generally* R.C. 733.50 (eligibility for the office of city director of law requires that the person is an attorney licensed to practice law in Ohio); R.C. 309.02 (eligibility for the office of prosecuting attorney requires that the person is an attorney licensed to practice law in Ohio). Thus, for the purpose of R.C. 3313.13, an "employee" of the city law director includes an assistant city law director. Accordingly, the fifth sentence of R.C. 3313.13 means that an assistant city law director may serve as a member of a board of education of a school district that is not a city school district or of a city school district for which the city law director is not the legal adviser and attorney under R.C. 3313.35.

Upon examination of the exceptions set forth in R.C. 3313.13, it is evident that whether an assistant law director of the City of Conneaut may serve as a member of the board of education of the

Conneaut Area City School District depends upon whether the law director of the City of Conneaut is the legal adviser and attorney for the Conneaut Area City School District under R.C. 3313.35.

R.C. 3313.35 provides, in pertinent part, "[i]n city school districts, the city director of law shall be the legal adviser and attorney for the board thereof, and shall perform the same services for such board as required of the prosecuting attorney for other boards of the county."[2] Although the plain language of R.C. 3313.35 requires the city law director to be the legal adviser and attorney for the board of education of a city school district located in the city, R.C. 3313.35 may be superseded by a conflicting city charter provision, ordinance, or resolution.

"In matters of local self-government involving procedure, it has long been held by courts of Ohio that a city charter provision prevails over a conflicting state statute." 2008 Op. Att'y Gen. No. 2008-032, at 2-330 (footnote omitted). A city charter provision that assigns duties to the city law director and the city law department addresses a procedural matter of local self-government. *See State ex rel. Frankenstein v. Hillenbrand*, 100 Ohio St. 339, 343, 126 N.E. 309 (1919) (the qualification, duties, and manner of selection of city officers are matters of local self-government); *Fitzgerald v. City of Cleveland*, 88 Ohio St. 338, 103 N.E. 512 (1913) (syllabus, paragraph 1) ("[t]he provisions of Section 7, Article XVIII of the Constitution … authorize any city … to frame and adopt or amend a charter for its government and it may prescribe therein the form of the government and define the powers and duties of the different departments"); 2008 Op. Att'y Gen. No. 2008-032, at 2-330, n.6 ("[a] matter of local self-government involves procedure when the matter relates to the structural organization or the form of government of a municipal corporation"). "[I]n order for a city charter provision to supersede a state statute in a matter of local self-government involving procedure, the conflict must be in the express language of the charter and not by mere inference." 2008 Op. Att'y Gen. No. 2008-032, at 2-331.

In addition, an ordinance or resolution of a charter city may supersede a state statute involving procedure "when (1) the city's charter reserves home rule authority to permit enactment of ordinances or resolutions at variance with state statutes and (2) the city's legislative authority enacts an accompanying ordinance or resolution that conflicts with the state statute." *Id*. at 2-331; *see also State ex rel. Bardo v. City of Lyndhurst*, 37 Ohio St. 3d 106, 110, 524 N.E.2d 447 (1988) ("express charter language is required to enable a municipality to exercise local self-government powers in a manner contrary to state civil service statutes"); *accord* 2004 Op. Att'y Gen. No. 2004-051, at 2-436, n.6. Therefore, R.C. 3313.35 applies to the law director of the City of Conneaut, unless there is an expressly conflicting charter provision, or there is a charter provision that reserves authority for the

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[2] The legal services a prosecuting attorney provides are included in R.C. 3313.35, which states, in pertinent part, "[t]he prosecuting attorney shall prosecute all actions against a member or officer of a board for malfeasance or misfeasance in office, and he shall be the legal counsel of such boards or the officers thereof in all civil actions brought by or against them and shall conduct such actions in his official capacity."

enactment of ordinances or resolutions that vary from state statutes and an accompanying ordinance or resolution that conflicts with R.C. 3313.35.

With respect to the powers and duties of the law director of the City of Conneaut, Section IX-4 of the City of Conneaut Charter states, in pertinent part:

> The Director of Law shall be legal advisor to the Council, to all offices, departments and agencies, and to all officers and employees in matters relating to their official powers and duties, [and] shall perform such services as are required by ordinance or as may be assigned by the City Manager.

No provision of the charter of the City of Conneaut expressly states that the law director of the City of Conneaut shall not be the legal adviser and attorney for the board of education of the Conneaut Area City School District. Thus, no provision of the charter of the City of Conneaut expressly conflicts with R.C. 3313.35.

With respect to whether an ordinance or resolution of the City of Conneaut supersedes R.C. 3313.35, Section II-3 of the City of Conneaut Charter provides, in pertinent part:

> [t]he laws of the State of Ohio not inconsistent with this Charter, except those declared inoperative by ordinance of the Council, shall have the force and effect of ordinances of the City of Conneaut but in the event of conflict between any such law and any municipal ordinance or resolution, the provisions of the ordinance or resolution shall prevail and control.

Section II-3 is a statement that state statutes regarding the organization and government of cities apply to the government offices of the City of Conneaut unless they conflict with a city ordinance or resolution. Section II-3 may be construed as a reservation of power to the legislative authority of the City of Conneaut to enact an ordinance or resolution at variance with R.C. 3313.35. However, you have not provided any information indicating that a resolution or ordinance has been adopted expressly stating that the law director of the City of Conneaut shall not be the legal adviser for the board of education of the Conneaut Area City School District. We, therefore, presume that there is no such ordinance or resolution. Accordingly, R.C. 3313.35 applies to the law director of the City of Conneaut. *See State ex rel. Grandview Heights City Sch. Dist. Bd. of Educ. v. Morton*, 44 Ohio St. 2d 151, 154, 339 N.E.2d 663 (1975) (when a city's charter incorporates the duties imposed by the general laws of the state on a city solicitor, the city solicitor shall provide legal services to a city school district board of education pursuant to R.C. 3313.35). Therefore, the law director of the City of Conneaut is the legal adviser and attorney for the board of education of the Conneaut Area City School District under R.C. 3313.35.

We now return to the exceptions set forth in R.C. 3313.13 and apply them to the city law director and assistant law director of the City of Conneaut. We have determined that the law director of the City of Conneaut is the legal adviser and attorney for the board of education of the Conneaut Area City School District under R.C. 3313.35. In addition, your letter indicates that the board of

education of the Conneaut Area City School District does not utilize any of the legal services of the city law director's office. Instead, the board of education engages other private law firms to provide all of its needed legal services. Consequently, the exception set forth in the fourth sentence of R.C. 3313.13 applies to the law director of the City of Conneaut: "[a] city director of law who was appointed to that position under a city charter may serve as a member of a board of education for which the city director of law is the legal adviser and attorney under [R.C. 3313.35], but only if the board uses no legal services of the office of the city law director[.]" Because the law director of the City of Conneaut is the legal adviser for the board of education of the Conneaut Area City School District under R.C. 3313.35 and the board of education does not use any legal services of the city law director's office, the law director of the City of Conneaut may serve on the board of education of the Conneaut Area City School District.

An assistant law director of the City of Conneaut, as an employee of an appointed city law director, shall comply with the fifth sentence of R.C. 3313.13: "[a]n employee of an appointed … city director of law may serve as a member of a board of education for which the city director of law is not the legal adviser and attorney under [R.C. 3313.35]." Insofar as the assistant law director of the City of Conneaut is an employee of an appointed city law director, and the law director of the City of Conneaut is the legal adviser and attorney for the board of education of the Conneaut Area City School District, R.C. 3313.13 does not permit the assistant law director of the City of Conneaut to serve as a member of the board of education of the Conneaut Area City School District.

One may question whether the exception in the fourth sentence of R.C. 3313.13 that permits the law director of the City of Conneaut to serve as a member of the board of education of the Conneaut Area City School District by implication permits an assistant law director of the City of Conneaut to also serve as a member of the same board of education. An assistant duly appointed is often clothed with all the powers and privileges of his principal when he acts on behalf of his principal. *See* 1913 Op. Att'y Gen. No. 677, vol. I, p. 746, at 747; *see generally* R.C. 3.06(A) ("[a] deputy, when duly qualified, may perform any duties of his principal"); 2A Ohio Admin. Code 123:1-47-01(A)(8) (an "assistant" is "an employee who aids and assists an appointing authority in the discharge and performance of duties … which involve the responsibility of the principal"). Consequently, an assistant is generally prohibited from holding a position that his principal is prohibited from holding. *See* 1986 Op. Att'y Gen. No. 86-035, at 2-178. Likewise, an assistant may generally hold a position that his principal is permitted to hold. *Cf. Rose v. Village of Wellsville*, 63 Ohio Misc. 2d 9, 20, 613 N.E.2d 262 (Columbiana County C.P. 1993) (noting that "if the prosecutor can hold [the] two positions, then it follows so may his assistant").

There are several reasons that support the conclusion that in enacting R.C. 3313.13, the General Assembly did not intend for the exceptions that apply to a city law director to also apply to an assistant city law director. R.C. 1.47(B) provides that "[i]n enacting a statute, it is presumed that … [t]he entire statute is intended to be effective[.]" Rules of statutory construction require that a statute is interpreted so as to give effect to all of its provisions. *Zurawski v. City of N. Olmstead*, No. 50711, 1986 Ohio App. LEXIS 6916, at *6 (Cuyahoga County May 22, 1986). Moreover, a statute shall be read as a whole, considering each provision within the context of the entire statute, rather than

isolating one provision from its entirety. *See State v. Jackson*, 102 Ohio St. 3d 380, 385, 2004-Ohio-3206, 811 N.E.2d 68, at ¶34 ("'[i]n reviewing a statute, a court cannot pick out one sentence and disassociate it from the context, but must look to the four corners of the enactment to determine the intent of the enacting body'" (quoting *State v. Wilson*, 77 Ohio St. 3d 334, 336, 673 N.E.2d 1347 (1997))). In using the terms "prosecuting attorney," "assistant prosecuting attorney," "city director of law," and "employee of an appointed or elected city director of law" in R.C. 3313.13, the General Assembly has addressed separately principals and their assistants. For example, the first sentence of R.C. 3313.13 refers to a prosecuting attorney, yet the second sentence of R.C 3313.13 addresses an exception specific to an assistant prosecuting attorney. The third and fourth sentences of R.C. 3313.13 refer specifically to a city law director, while the fifth sentence addresses employees of a city law director. This demonstrates the General Assembly's intent to treat prosecuting attorneys and city law directors differently from their assistants.

Moreover, in construing a statute, it is reasonable to presume that the General Assembly had knowledge of the statute's previously enacted provisions. *See State v. Frost*, 57 Ohio St. 2d 121, 125, 387 N.E.2d 235 (1979) ("[i]t is axiomatic that it will be assumed that the General Assembly has knowledge of prior legislation when it enacts subsequent legislation"). In 2005, the General Assembly amended R.C. 3313.13 to add the language that comprises R.C. 3313.13's fifth sentence. Am. H.B. 455, 126th Gen. A. (2005) (eff. Feb. 2, 2006). Am. H.B. 455's only change to R.C. 3313.13 was the addition of the fifth sentence; no other provisions of R.C. 3313.13 were altered or deleted. *See* Ohio Legislative Service Comm'n, Final Bill Analysis, Am. H.B. 455 (2006). When a new provision is added to a statute, "[t]he presumption is, that every amendment of a statute is made to effect some purpose." *Lytle v. Baldinger*, 84 Ohio St. 1, 8, 95 N.E. 389 (1911). Had the General Assembly intended for the term "city director of law" in R.C. 3313.13 to include, by implication, the city law director's assistants, the enactment of the fifth sentence of R.C. 3313.13 would be superfluous and unnecessary. *See State ex rel. Myers v. Bd. of Education*, 95 Ohio St. 367, 373, 116 N.E. 516 (1917) ("[n]o part [of a statute] should be treated as superfluous unless that is manifestly required, and the court should avoid that construction which renders a provision meaningless or inoperative"). A reasonable construction of R.C. 3313.13 necessitates the conclusion that the exceptions that expressly apply to a city law director do not apply, by implication, to an assistant city law director.

The General Assembly did not include the same conditions in the fifth sentence of R.C. 3313.13 as it did in the fourth sentence of R.C. 3313.13, which applies to a city law director. If the General Assembly had intended to permit an assistant city law director to serve on a board of education of a city school district under the same conditions that a city law director may serve as a member of a board of education, the General Assembly could have used the language in the fifth sentence that it used for a city law director in the fourth sentence. *See Metro. Sec. Co. v. Warren State Bank*, 117 Ohio St. 69, 76, 158 N.E. 81 (1927) (the General Assembly, "[h]aving used certain language in the one instance and wholly different language in the other, it will rather be presumed that different results were intended"); *Lake Shore Elec. Ry. Co. v. P.U.C.O.*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926) (if a particular meaning was intended, "it would not have been difficult to find language which would express that purpose" having used that language elsewhere). In light of the plain language of R.C. 3313.13, we are constrained to conclude that an

assistant law director of the city of Conneaut may not serve as a member of the board of education of the Conneaut Area City School District when the city law director is the legal adviser and attorney for the board of education of the Conneaut Area City School District under R.C. 3313.35. *See State v. Elam*, 68 Ohio St. 3d 585, 587, 629 N.E.2d 442 (1994) ("[t]he polestar of statutory interpretation is legislative intent, which a court best gleans from the words the General Assembly used and the purpose it sought to accomplish. Where the wording of a statute is clear and unambiguous, this court's only task is to give effect to the words used").

Based upon the foregoing, it is my opinion, and you are hereby advised that R.C. 3313.13 does not permit an assistant law director of the City of Conneaut to serve simultaneously as a member of the board of education of the Conneaut Area City School District when the law director of the City of Conneaut is the legal adviser and attorney for the board of education of the Conneaut Area City School District under R.C. 3313.35.

Very respectfully yours,

MICHAEL DEWINE
Ohio Attorney General