

OPINION NO. 84-068

Syllabus:

Pursuant to R.C. 3333.01, an Ohio resident who is a trustee of an out-of-state private university may not serve on the Ohio Board of Regents.

To: Richard F. Celeste, Governor of the State of Ohio, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, November 28, 1984

You have asked whether, pursuant to R.C. 3333.01, an Ohio resident who is a trustee of an out-of-state private university may be appointed to serve on the Ohio Board of Regents. R.C. 3333.01 states, in relevant part:

There is hereby created the Ohio board of regents consisting of nine members to be appointed by the governor with the advice and consent of the senate. The members shall be residents of this state who possess an interest in and knowledge of higher education. No member shall be a trustee, officer, or employee of any public or private college or university while serving as a member of the board. (Emphasis added.)

Your question is, thus, whether the words "any public or private college or university" include an out-of-state private university. I believe that they do.

It is a general rule of statutory construction that, where words used in a statute are not defined by the legislature, they should be given their ordinary meanings. Baker v. Powhatan Mining Co., 146 Ohio St. 600, 67 N.E.2d 714 (1946). The word "any" is generally defined as meaning "one or more without specification or identification" or "whatever or whichever it may be." The Random House Dictionary of the English Language 68 (unabridged ed. 1973). It is, thus, a broad word. As used in R.C. 3333.01, it connotes all public or private colleges or universities. Nothing in the language of R.C. 3333.01 suggests that an exception exists for an out-of-state private university, and I have no basis for creating such an exception to the clear language of R.C. 3333.01. See Wachendorf v. Shaver, 149 Ohio St. 231, 78 N.E.2d 370 (1948) (syllabus, paragraph 5) ("[t]he court must look to the statute itself to determine legislative intent, and if such intent is clearly expressed therein, the statute may not be restricted, constricted, qualified, narrowed, enlarged or abridged. . .").

Other provisions of the Revised Code relating to the Ohio Board of Regents reflect the fact that, where the General Assembly intended that reference be only to in-state institutions, it expressly so stated. For example, R.C. 3333.09, which authorizes a conveyance and leaseback arrangement for public universities and colleges, defines the term "[p]ublic university or college," for use in that section, as "any non-profit university or college situated within this state which is open to the public on equal terms and which is not affiliated with or controlled by an organization which is not primarily educational in nature" (emphasis added). See R.C. 3333.021 (defining "university," as used in that section, as "any college or university that receives a state appropriation"); R.C. 3333.04(K) (authorizing the Ohio Board of Regents to seek the cooperation and advice of officers and trustees "of both public and private colleges, universities, and other institutions of higher education in the state"); R.C. 3333.12 (defining an "[e]ligible student" for an instructional grant as one who attends a qualified institution "in this state"). In contrast, essentially the same prohibition appearing in R.C. 3333.01 appears also in R.C. 3333.03(C): "Neither the chancellor nor any staff member or employee of the board [of regents] shall be a trustee, officer, or employee of any public or private college or university while serving on the board" (emphasis added).

I appreciate that, in selecting members of the Ohio Board of Regents, you are interested in obtaining highly-qualified and concerned individuals, and that you may find yourself somewhat restricted by the requirement that no member may be a trustee of any public or private college or university, including an out-of-state private university. Upon reflection, however, I believe that there is a reasonable basis for so broad a restriction. The common law rule against conflict of interest, which applies to a public officer who holds another public office or employment or a private position, see 1981 Op. Att'y Gen. No. 81-101, prohibits a public officer from holding dual positions if he would be subject to conflicting duties or loyalties, or if he would be exposed to the temptation of acting in a manner that is not in the best interests of the public. See generally State ex rel. Hover v. Wolven, 175 Ohio St. 114, 191 N.E.2d 723 (1963); State ex rel. Attorney General v. Gebert, 12 Ohio c.c. (n.s.) 274 (Cir. Ct. Franklin County 1909); Pistole v. Wiltshire, 90 Ohio L.Abs. 525 (C.P. Scioto County 1961); 1983 Op. Att'y Gen. No. 83-035; 1979 Op. Att'y Gen. No. 79-111. Specific types of conflicts of interest are prohibited by R.C. 102.03, 102.04, 2921.42 and similar statutory provisions. Even where such specific provisions are not applicable, however, there may be an interest in assuring that a public official will not be subject to any conflicting loyalties, and it appears to be this concern to which R.C. 3333.01 is addressed. A member of the Ohio Board of Regents will have certain duties and powers which may impact upon the activities of particular colleges and universities. For example, R.C. 3333.17 and 3333.18 authorize the Ohio

Board of Regents to enter into contracts with contiguous states providing for arrangements under which residents of one state may attend state-assisted educational institutions in the other state for the same fees charged to residents and providing for arrangements under which financial aids from the funds of one state may be used by qualified recipients to attend approved educational institutions in the other state. More generally, actions of the Ohio Board of Regents may affect competition among institutions for federal grants, for particular academic programs, or for outstanding faculty or students. See generally R.C. 3333.04 (duties of the Ohio Board of Regents include formulating a master plan for higher education in the state, approving or disapproving the establishment of institutions of higher education and their branches, recommending the nature of the programs, research, and services to be offered by state-assisted institutions of higher education, and approving or disapproving all new degree programs at state-assisted institutions of higher education); R.C. 3333.06 (duties of the Ohio Board of Regents include doing all things necessary for participation in federal acts relative to the construction of higher educational academic facilities); R.C. 3333.08 (Ohio Board of Regents may exercise power of eminent domain on behalf of a private institution of higher education in certain circumstances). While it might be that a trustee of an out-of-state private university who served on the Ohio Board of Regents would never incur a direct conflict of interest between his duties to the two bodies, or that he could remove himself from any particular action that involved such a direct conflict, see, e.g., 1980 Op. Att'y Gen. No. 80-035; Op. No. 79-III, it is possible that a conflicting sense of loyalty might occur that would, however slightly, color his perception of his duties to the people of the State of Ohio. Cf. 1970 Op. Att'y Gen. No. 70-168 (overruled by 1981 Op. Att'y Gen. No. 81-100 on the basis of revised legislation) (concluding that a person who had some relationship to a county mental health and retardation board could properly serve as a member of the board so long as there was no actual conflict of interest). It appears that the broad language of R.C. 3333.01 was intended to prevent even the possibility of a conflicting sense of loyalty and that, to implement this intent, the language of R.C. 3333.01 must be applied, without qualification, to exclude from membership on the Ohio Board of Regents anyone who is a trustee of a public or private college or university, regardless of the location of that college or university.

Accordingly, it is my opinion, and you are hereby advised, that pursuant to R.C. 3333.01, an Ohio resident who is a trustee of an out-of-state private university may not serve on the Ohio Board of Regents.