

July 13, 2020

The Honorable Paul J. Gains
Mahoning County Prosecuting Attorney
Administration Building, 6th Floor
21 West Boardman Street
Youngstown, Ohio 44503

SYLLABUS: 2020-004

1. The definition of “direct services contract” in R.C. 5126.03(A) does not include, with one caveat, contracts between vendors and a County Board of Developmental Disabilities (“Board”) that authorize the vendor to provide services to eligible persons. The caveat is this: the definition *does* include contracts that authorize payments from the Board to eligible persons or members of the eligible person’s immediate family.
2. An ethics council appointed pursuant to R.C. 5126.031 (“Ethics Council”) is required to review all direct services contracts, even if the payment made pursuant to the contract is not with a Board member, immediate family member of a Board member, Board employee, or immediate family member of a Board employee.
3. An Ethics Council is not required to review all outside employment of Board employees to ensure that the requirements of R.C. 5126.0221 are met. Instead, this duty is given to the Board as a whole.



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OPINION NO. 2020-004

The Honorable Paul J. Gains
Mahoning County Prosecuting Attorney
Administration Building, 6th Floor
21 West Boardman Street
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Dear Prosecutor Gains:

You have requested an opinion regarding the responsibilities of an ethics council appointed by a County Board of Developmental Disabilities (“Board”). Based upon your letter and conversations with your office, I have reworded your questions as follows:

1. Does the definition of “direct services contract” in R.C. 5126.03(A) include contracts between the Board and vendors that authorize the vendor to provide services to eligible persons, or is it limited to contracts that result in the Board’s making payments to eligible persons?
2. Is an ethics council appointed pursuant to R.C. 5126.031 (“Ethics Council”) required to review all direct services contracts, even if the payment made pursuant to the contract is not made to a Board member, immediate family member of a Board member, Board employee, or immediate family member of a Board employee?
3. Is an Ethics Council required to review all outside employment of Board employees to

ensure that the requirements of R.C. 5126.0221 are met?

Background of Ethics Councils appointed by County Boards of Developmental Disabilities

County Boards of Developmental Disabilities provide services to individuals with developmental disabilities. R.C. Chapter 5126. Each Board is required to appoint three of its members to an Ethics Council. R.C. 5126.031. The Ethics Council is required to review “all” direct services contracts that the Board is considering entering into. R.C. 5126.032. Direct services contracts are defined in R.C. 5126.03.

The Ethics Council must review each direct services contract to ensure that that the contract meets three requirements. First, the contract must be limited to either the actual amount of the expenses or to a reasonable and allowable amount projected by the Board. R.C. 5126.033(A). Second, if the contract would result in a payment to a Board member, employee, former Board member, or former employee of the Board (or an immediate family member of one of the above), the Ethics Council must ensure that the contract does not give the person receiving the payment any preferential treatment or unfair advantage over other eligible persons. R.C. 5126.033(B). Third, that if the contract will result in the employment of an individual that is also an employee of the Board, the Ethics Council must ensure that certain specified conditions are met. R.C. 5126.033(C).

A Board can choose not to have an Ethics Council if the Board passes a resolution stating that it will not enter into any direct services contracts with Board members or their families. R.C. 5126.031(B). Doing so does not alleviate the Board from performing the contract reviews that the Ethics Council normally performs. Instead, the entire Board performs these reviews itself. *Id.*

Your letter asks questions regarding the specific duties of an Ethics Council.

Does the definition of “direct services contract” include contracts between the Board and vendors that result in the vendor providing services to eligible persons, or is it limited to contracts that result in the Board’s making payments directly to eligible persons?

You first ask whether an Ethics Council’s review of contracts is limited to situations where the Board *directly* provides payments to eligible persons, or if the Ethics Council must also review contracts that the Board enters into with vendors that then provide services to eligible persons. I conclude that the Ethics Council is not required to review contracts that the Board proposes to enter into with vendors that authorize the vendor to provide services to eligible persons, unless the contract also results in payments being made directly from the Board to eligible persons or their immediate family.

The answer to your question hinges on the definition of direct services contracts. R.C. 5126.03(A) defines a direct services contract as:

[A]ny legally enforceable agreement with an individual, agency, or other entity that, pursuant to its terms or operation, may result in a payment from a county board of developmental disabilities to an eligible person or to a member of the immediate family of an eligible person for services rendered to the eligible person. ‘Direct services contract’ includes a contract for supported living pursuant to sections 5126.40 to 5126.47 of the Revised Code, family support services under section 5126.11 of the Revised Code, and

reimbursement for transportation expenses.

An “eligible person” is defined as “a person eligible to receive services from a county board or from an entity under contract with a county board.” R.C. 5126.03(B).

As written, this definition does not include contracts with vendors that provide services to eligible persons. The statute speaks only to “payments” being made “from” a Board “to” an eligible person (or an eligible person’s family). The word “payment” connotes an exchange of money. And the statute makes clear that it covers only those “payments”—only those exchanges of money—between the Board and the eligible person or the eligible person’s family member. So when the money moves to a *vendor*, who then provides the eligible person (or person’s family member) with services rather than money, there is no “payment” “from” the Board “to” the eligible person (or eligible person’s family member).

This interpretation finds support not just in the plain meaning of its words, but also in the principle that no part of a statute should be read to be meaningless, if possible. *See East Ohio Gas Co. v. Pub. Util. Comm.*, 39 Ohio St.3d 295, 299, 530 N.E.2d 875 (1988). Here, R.C. 5126.03(A) expressly includes only contracts that “may result in a payment from a county board of developmental disabilities *to an eligible person or to a member of the immediate family of an eligible person* for services rendered to the eligible person.” (Emphasis added.) The italicized language is superfluous if a payment made to those who are *not* eligible persons, or family members of eligible persons, is captured by the statutory definition.

I therefore conclude that the definition of direct services contracts does not include contracts with vendors that authorize the vendor to provide services to eligible persons, unless the contract also results in a

payment to the eligible person. Because these contracts are not direct services contracts, the Ethics Council does not have to review them.

Are Ethics Councils required to review all direct services contracts, even if the payment made pursuant to the contract is not made to a Board member, immediate family member of a Board member, Board employee, or immediate family member of a Board employee?

You ask whether the Ethics Council is required to review *all* payments made by a Board to an individual with developmental disabilities or their families. Based upon your letter and conversations with your office, I interpret your question as asking whether an Ethics Council must review direct services contracts even if the individual receiving the payment is not a Board member, immediate family member of a Board member, Board employee, or immediate family member of a Board employee. I conclude that the Ethics Council must still conduct a review of the contract even if the recipient of the payment is not one of these individuals.

The Ethics Council is required to review “all” direct services contracts. R.C. 5126.032(A). Nothing in the definition of “direct services contracts” limits its definition to only those contracts that result in payment to Board members, employees, or their families. R.C. 5126.03(A). Moreover, two aspects of direct services contracts that the Ethics Council reviews do not relate to whether the person receiving the payment is a Board member, employee, or member of their family. First, R.C. 5126.033(A) requires that direct services contracts be “limited to either the actual amount of the expenses or to a reasonable and allowable amount projected by the board.” Second, R.C. 5126.033(C), requires review to determine whether an entity the Board contracts with also *employs* a Board employee. These requirements confirm what the word “all” suggests: Ethics Councils

are required to review direct services contracts even if the person receiving the payment is not a Board member, Board employee, or member of their families.

Additionally, in your letter, you refer to an Ethics Council review of all *payments*, rather than a review of all *direct services contracts*. To the extent your question implies a belief that the Ethics Council must conduct a separate review of each individual payment made to an eligible person, the statute does not so require. R.C. 5126.032(A) states that the Ethics Council shall review “all direct services contracts[.]” A “direct services contract” is defined in applicable part as “any legally enforceable agreement.” R.C. 5126.03(A). So long as the payment is made pursuant to the terms of the underlying legally enforceable agreement, a separate Ethics Council review of each individual payment is not necessary.

Is it the Ethics Council’s duty to ensure that the prohibitions placed on Board employment in R.C. 5126.0221 are met?

Certain individuals may not be employed by the Board. R.C. 5126.0221. You ask whether the Ethics Council must review characteristics of Board employees, such as reviewing whether an employee has prohibited outside employment, to ensure that the Board does not employ individuals prohibited by R.C. 5126.0221. I conclude that the Ethics Council need not conduct this review.

Neither R.C. 5126.0221 nor any other statute says that the Ethics Council must review the status of Board employees, or potential employees, to ensure that the requirements of R.C. 5126.0221 are met. So nothing in the law suggests that the Ethics Council has such a duty. Instead, I view the requirements of R.C. 5126.0221 as requirements that the Board as a whole must ensure are met.

R.C. 5126.0221 includes a reference to the direct services contract reviews that the Ethics Council conducts pursuant to R.C. 5126.033. R.C. 5126.0221(B) (“Except as provided in division (C) of section 5126.033 of the Revised Code, none of the following individuals may be employed by a county board of developmental disabilities[.]”) This reference, however, merely creates an exemption from the prohibitions on Board employment included in R.C. 5126.0221. It does not give the Ethics Council a proactive duty to review all employees for compliance with R.C. 5126.0221.

I conclude that the Ethics Council is not required to ensure that the requirements of R.C. 5126.0221 are met. Instead, this duty is given to the Board.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. The definition of “direct services contract” in R.C. 5126.03(A) does not include, with one caveat, contracts between vendors and a Board that authorize the vendor to provide services to eligible persons. The caveat is this: the definition *does* include contracts that authorize payments from the Board to eligible persons or members of the eligible person’s immediate family.
2. An Ethics Council appointed pursuant to R.C. 5126.031 is required to review all direct services contracts, even if the payment made pursuant to the contract is not with a Board member, immediate family member of a Board member, Board employee, or immediate family member of a Board employee.

3. An Ethics Council appointed pursuant to R.C. 5126.031 is not required to review all outside employment of Board employees to ensure that the requirements of R.C. 5126.0221 are met. Instead, this duty is given to the Board as a whole.

Respectfully,



DAVE YOST
Ohio Attorney General