

OPINION NO. 87-019**Syllabus:**

1. The executive director of a metropolitan housing authority is a "public servant" as that term is defined in R.C. 2921.01(B).
2. A violation of R.C. 2921.43(C) by an executive director of a metropolitan housing authority constitutes misconduct in office for the purposes of R.C. 2901.13(C).

To: Lynn Slaby, Summit County Prosecuting Attorney, Akron, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, April 2, 1987

I have before me your request for an opinion in which you ask the following questions:

1. Is the executive director of a metropolitan housing authority a "public servant" defined by Ohio Revised Code §2921.01?
2. Would a violation of Ohio Revised Code §2921.43(C) by an executive director of a metropolitan housing authority constitute "misconduct in office" for purposes of Ohio Revised Code §2901.13(C)?

In answering your questions, I must first review the

definition of "public servant" found in R.C. 2921.01(B), providing:

- (B) "Public servant" means any of the following:
- (1) Any public official;
 - (2) Any person performing ad hoc a governmental function, including without limitation a juror, member of a temporary commission, master, arbitrator, advisor, or consultant;
 - (3) A candidate for public office, whether or not he is elected or appointed to the office for which he is a candidate. A person is a candidate for purposes of this division if he has been nominated according to law for election or appointment to public office, or if he has filed a petition or petitions as required by law to have his name placed on the ballot in a primary, general, or special election, or if he campaigns as a write-in candidate in any primary, general, or special election.

R.C. 2921.01(A) defines "public official" as follows:

- (A) "Public official" means any elected or appointed officer, or employee, or agent of the state or any political subdivision thereof, whether in a temporary or permanent capacity, and including without limitation legislators, judges, and law enforcement officers.

In order to answer your first question, it is necessary to examine the position of executive director of a metropolitan housing authority. A metropolitan housing authority is a creature of statute. R.C. 3735.27 et seq. Pursuant to R.C. 3735.27 if the director of development finds that either unsanitary or unsafe inhabited housing accommodations or a shortage of safe, sanitary housing exist in an area within a county comprised of two or more political subdivisions, but less than the entire county, the board may establish a metropolitan housing authority. The five member metropolitan housing authority may then employ an executive director pursuant to R.C. 3735.28. The duties of the executive director are not defined by statute. There seems to be little question, however, that a metropolitan housing authority is a political subdivision of the state. Cuyahoga Metropolitan Housing Authority v. Cleveland, 342 F. Supp. 250 (1972), Country Club Hills Homeowners Assn. v. Jefferson Metropolitan Housing Authority, 5 Ohio App. 3d 77, 449 N.E.2d 460 (Jefferson Cty. 1981). Thus, in answer to your first question, the director of a metropolitan housing authority is a "public servant" as that term is defined in R.C. 2921.01(A) and (B), since he is an officer or employee of a political subdivision of the state.

I turn now to your second question concerning whether a violation of R.C. 2921.43(C) by an executive director of a metropolitan housing authority constitutes "misconduct in office" for purposes of R.C. 2901.13(C). R.C. 2901.13(C) provides:

- (C) If the period of limitation provided in division (A)¹ of this section has expired,

¹ R.C. 2901.13(A) provides:

prosecution shall be commenced for an offense involving misconduct in office by a public servant as defined in section 2921.01 of the Revised Code, at any time while the accused remains a public servant, or within two years thereafter.

The Ohio Revised Code does not define "misconduct in office" for purposes of R.C. 2901.13. The Ohio Supreme Court has stated, in reference to a definition of "misconduct in office", that: "[o]ur attention has not been called to a better definition of the phrase in question than the following: 'Any unlawful misbehavior in relation to the duties of an office, willful in its character.'" State v. Bair, 71 Ohio St. 410, 427, 73 N.E. 514, 515 (1905). See also, 1982 Op. Att'y Gen. No. 82-007 at 2-21 (a finding of misconduct in office requires a showing of corrupt motive or bad faith). The concept of misconduct in office as stated in Bair requires that there be a nexus between the misbehavior and the public office². Thus, I must determine whether or not the relationship between the duties of a "public servant" and the offense described in R.C. 2921.43(C), is sufficient to satisfy that requirement.

R.C. 2921.43(C) provides:

(C) No person for the benefit of a political party, campaign committee, or political action committee³ shall coerce any contribution in consideration of either of the following:

(A) Except as otherwise provided in this section, a prosecution shall be barred unless it is commenced within the following periods after an offense is committed:

(1) For a felony other than aggravated murder or murder, six years;

(2) For a misdemeanor other than a minor misdemeanor, two years;

(3) For a minor misdemeanor, six months.

² R.C. 2901.04(A) provides:

Sections of the Revised Code defining offenses or penalties shall be strictly construed against the state and liberally construed in favor of the accused.

While it is not clear whether the statutory time limits of R.C. 2901.13 are to be strictly construed under R.C. 2901.04, the reading of "misconduct in office" adopted by the Ohio Supreme Court in Bair is the narrowest reasonable reading of that term. By way of contrast, it has been held that the phrase "dishonesty in office" as used in R.C. 124.34 applies to any dishonest conduct occurring during the tenure of employment, and need not be related to a public employee's job or position. Craddolph v. Ackerman, 57 Ohio App. 2d 150, 385 N.E.2d 1091 (Franklin County 1978).

³ R.C. 3517.01(A) defines "political party" as follows:

(A) A political party within the meaning of Title XXXV [35] of the Revised Code is any group of voters which, at the last preceding regular

(1) Appointing or securing, maintaining, or renewing the appointment of any person to any public office, employment, or agency;

(2) Preferring, or maintaining the status of, any public employee with respect to his compensation, duties, placement, location, promotion, or other material aspects of his employment.

R.C. 2921.43(E) includes an additional penalty for public servants convicted of violating R.C. 2921.43(C). R.C. 2921.43(E) provides:

(E) A public servant who is convicted of a violation of this section is disqualified from holding any public office, employment, or position of trust in this state for a period of seven years from the date of conviction.

This additional special penalty, applying only to public servants convicted of violating R.C. 2921.43(C), indicates that the General Assembly concluded that public servants convicted under R.C. 2921.43(C) should not soon be placed into a position

state election, polled for its candidate for governor in the state or nominees for presidential electors at least five per cent of the entire vote cast for such office or which filed with the secretary of state, subsequent to any election in which it received less than five per cent of such vote, a petition signed by qualified electors equal in number to at least one per cent of the total vote for governor or nominees for presidential electors at the last preceding election, declaring their intention of organizing a political party, the name of which shall be stated in the declaration, and of participating in the next succeeding primary election, held in even-numbered years, that occurs more than one hundred twenty days after the date of filing. No such group of electors shall assume a name or designation that is similar, in the opinion of the secretary of state, to that of an existing political party as to confuse or mislead the voters at an election. When any political party fails to cast five per cent of the total vote cast at an election for the office of governor or president it shall cease to be a political party.

R.C. 3517.01(B)(5) defines "contribution" as follows:

(5) "Contribution" means a loan, gift, deposit, forgiveness of indebtedness, donation, advance, payment, transfer of funds or transfer of anything of value, and the payment by any person other than the person to whom the services are rendered for the personal services of another person, which contribution is made, received, or used for the purpose of influencing the results of an election. "Contribution" does not include:

(a) Services without compensation by

of public trust. The additional penalty underscores the inherent relationship between public service and the unlawful conduct prohibited by R.C. 2921.43(C). A violation of R.C. 2921.43(C) by the executive director of a metropolitan housing authority should be considered misconduct in office for purposes of R.C. 2901.13(C) because it is the status of the position which presumably facilitates the prohibited coercion of others. The coercion element of R.C. 2921.43(C) also satisfies the requirement of Bair that the misconduct be willful. For these reasons, I find that, in answer to your second question, a violation of R.C. 2921.43(C) by an executive director of a municipal housing authority constitutes misconduct in office for the purposes of R.C. 2901.13(C).

Therefore, it is my opinion and you are so advised:

1. The executive director of a metropolitan housing authority is a "public servant" as that term is defined in R.C. 2921.01(B).
2. A violation of R.C. 2921.43(C) by an executive director of a metropolitan housing authority constitutes misconduct in office for the purposes of R.C. 2901.13(C).

individuals volunteering a portion or all of their time on behalf of a person;

(b) Ordinary home hospitality;

(c) The personal expenses of a volunteer paid for by that volunteer campaign worker.

R.C. 3517.01(B)(8) defines "political action committee" as follows:

(8) "Political action committee" means a combination of two or more persons the primary or incidental purpose of which is to support or oppose any candidate, political party, or issue, or to influence the result of any election, and that is neither a political party nor a campaign committee.