

# OHIO ETHICS COMMISSION

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David E. Freel, *Executive Director*

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August 30, 2007      Informal Opinion 2007-INF-0830-2

Edward E. Corbett, Jr., Superintendent  
The Ohio School for the Deaf

Dear Mr. Corbett:

In a letter received by the Ohio Ethics Commission on May 1, 2007, you explained that the state has authorized and appropriated funds for the Ohio School Facilities Commission (OSFC) to administer the planning and design of a new consolidated school for the Ohio School for the Deaf (OSD) and the Ohio State School for the Blind (OSSB). You asked if the Ethics Law and related statutes prohibit OSD from paying travel, meal, and lodging expenses for state employees from OSD, OSSB, and OSFC to go on a fact-finding trip to examine the campuses of similar schools in California, Florida, and Texas.

## **Brief Answer**

As explained more fully below, OSD is not prohibited from paying the expenses for the necessary travel of OSD officials and employees. OSD is prohibited from promising or giving, to any state employee, travel, meals, and lodging expenses, or any other thing of substantial value, if OSD is interested in matters before, regulated by, or doing or seeking to do business with the employee's state agency. Because OSD is interested in matters before OSFC, OSD is prohibited from providing travel, meals, and lodging for OSFC employees. Assuming no business or regulatory relationships exist between OSD and OSSB, OSD is not prohibited from providing reasonable and necessary travel-related expenses for OSSB employees.

## **Soliciting, Accepting, and Providing Things of Value—R.C. 102.03(D), (E), and (F)**

The question you have presented raises issues under the conflict of interest provisions of the Ethics Law, which are set forth in R.C. 102.03(D), (E), and (F):

- (D) No public official or employee shall use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.
- (E) No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.
- (F) No person shall promise or give to a public official or employee anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

A "public official or employee" is any person who is elected or appointed to any department, division, institution, board, commission, authority, bureau or other instrumentality of the state. R.C. 102.01(B) and (C). Employees of OSD, OSFC, and OSSB are "public officials or employees" subject to the prohibitions of R.C. 102.03(D) and (E). OSD is a "person" subject to the prohibitions of R.C. 102.03(F). R.C. 1.59. Ohio Ethics Commission Advisory Opinion No. 90-003.

The term "anything of value" is defined to include money, goods and chattels, and every other thing of value. R.C. 1.03; 102.01(G). Travel, meals, and lodging expenses are things of value. See Adv. Ops. No. 2003-03, 92-018, and 89-014.

In order to determine whether the prohibition of R.C. 102.03 applies to any given situation, it is necessary to examine both the nature and source of the thing of value. Adv. Op. No. 86-011. A thing of value is of a substantial and improper character if it could impair a public official's or employee's objectivity and independence of judgment with respect to his or her public duties. Adv. Ops. No. 91-010 and 95-001.

The word "substantial" means "of or having substance, real, actual, true, not imaginary; of considerable worth or value; important." Adv. Op. No. 89-014 (quoting Adv. Ops. No. 75-014 and 76-005). Items which are de minimis or nominal in value could also have a substantial cumulative value over time. In past advisory opinions, the Commission has concluded that travel, meals, and lodging provided to public officials and employees are of a substantial nature. Adv. Ops. No. 89-013, 89-014, and 2000-04.

With regard to the source of the thing of value, the Ethics Commission has determined that anything of value provided to a public official or employee from a party that is interested in matters before, regulated by, or doing or seeking to do business with the agency he or she serves

will be of such a character as to manifest an improper influence on the official or employee. Adv. Ops. No. 84-010 and 86-011.

OSD is not an improper source of reasonable and necessary travel expenses for its own officials and employees. Therefore, the Ethic Law does not prohibit OSD from financing a fact-finding trip for its own employees. However, you may wish to consult the Ohio Auditor's Office and the Ohio Office of Budget and Management (OBM) regarding any questions about the appropriateness of any proposed expenditure of public resources.

OSFC has been charged with administering the planning and design of a new consolidated school, residential facility, transportation garage, and athletic facilities for the Ohio School for the Deaf (OSD) and the Ohio State School for the Blind (OSSB). Am. Sub. H.B. No. 699. The Executive Director of OSFC determines the planning, design, scope, and budget of the project in consultation with superintendents from OSD, OSSB, and OBM. *Id.* Because OSD is interested matters involving the new blind and deaf school planning and design, a project that is being administered by OSFC, R.C. 102.03(F) prohibits OSD from providing OSFC employees with travel, meals, and lodging, or any other thing of substantial value. Furthermore, R.C. 102.03(D) and (E) impose "reciprocal" restrictions on OSFC and prohibit OSFC employees from accepting, soliciting, or using their authority to secure travel, meals, and lodging from OSD.

It is unclear whether OSD is doing or seeking to do business with, interested in matters before, or regulated by OSSB. The fact that OSD's facility will soon be consolidated with OSSB's facility, in and of itself, does not make OSD a prohibited source of substantial things of value for OSSB employees. Assuming no business or regulatory relationships exist between the agencies, R.C. 102.03 does not prohibit OSD from giving to OSSB employees, or prohibit OSSB employees from accepting, reasonable and necessary travel, meals, and lodging expenses for a fact-finding trip.

### **Supplemental Compensation**

R.C. 2921.43(A)(1) also applies to the question you have raised. R.C. 2921.43(A)(1) provides that no public servant shall knowingly solicit or accept, and no person shall knowingly promise or give a public servant:

Any compensation, other than as allowed by divisions (G), (H), and (I) of section 102.03 of the Revised Code or other provisions of law, to perform the public servant's official duties, to perform any other act or service in the public servant's public capacity, for the general performance of the duties of the public servant's public office or public employment, or as a supplement to the public servant's public compensation.

Employees of OSD, OSSB, and OSFC are public servants subject to the prohibitions of R.C. 2921.43(A). R.C. 2921.43(A)(1) does not prohibit OSD from providing travel-related

expenses or reimbursements to OSD employees that are incurred in the performance of their public duties.

**Exception—R.C. 102.03(I)**

R.C. 102.03(G), (H), and (I) provide exceptions to the prohibition in R.C. 2921.43. R.C. 2921.43(A)(1) states that a public servant is prohibited from soliciting or accepting any compensation “other than as allowed by divisions (G), (H), and (I) of section 102.03 of the Revised Code or other provisions of law” to perform the public servant’s official duties. As long as R.C. 102.03 does not prohibit OSD from providing travel reimbursements to other state employees, R.C. 102.03(I) may apply to the situation you have described in your question.

R.C. 102.03(I) provides as follows:

A public official or employee may accept travel, meals, and lodging or expenses or reimbursement of expenses for travel, meals, and lodging in connection with conferences, seminars, and similar events related to official duties if the travel, meals, and lodging, expenses, or reimbursement is not of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person’s duties.

(Emphasis added.)

As discussed above, R.C. 102.03(E) prohibits a public official or employee from soliciting or accepting anything of value that is of such a character as to manifest a substantial and improper influence upon him or her with respect his or her duties. R.C. 102.03(E) and (I) are consistent with one another. Adv. Op. No. 86-011. In Advisory Opinion No. 86-011, the Commission interpreted R.C. 102.03(E) and (I) for the first time. The Commission stated: “Divisions (E) and (I) of Section 102.03 provide that the thing of value must be of such a character as to manifest a ‘substantial’ and ‘improper’ influence upon the public official or employee with respect to his duties.” In Advisory Opinion No. 86-011, the Commission concluded that a public employee is prohibited from accepting travel, meals, and lodging from a party that is regulated by, interested in matters before, or doing or seeking to do business with, the public agency which employs him or her. R.C. 102.03(I) does not permit a public employee to accept travel, meals, or lodging from a party that is regulated by, interested in matters before, or doing or seeking to do business with, the public agency that employs him or her. Id.

The exception in R.C. 102.03(I), then, provides an exception from the prohibition in R.C. 2921.43(A)(1) if the event is related to the public servant’s official duties and the party providing the travel, meals, and lodging expenses is not regulated by, interested in matters before, or doing or seeking to do business with the public servant’s agency. However, the payment or reimbursement of travel, meal, and lodging expenses must be limited to actual amounts essential

for travel. Adv. Op. No. 87-007. The exception does not apply to any compensation, including any honorarium or any portion of payments, that may exceed actual travel-related expenses.

A fact-finding trip associated with the design and planning of the new consolidated school is an event related to the official duties of OSFC, OSD, and OSSB employees. However, because OSD is interested in matters before OSFC, R.C. 102.03(I) will not exempt OSFC employees from the prohibition of R.C. 2921.43(A)(1). Therefore, R.C. 2921.43(A)(1), in addition to R.C. 102.03, prohibits OSD from giving to any OSFC employee, and prohibits an OSFC employee from accepting, travel, meals, and lodging expenses to go on a fact-finding trip.

Assuming that OSD is not interested in matters before, regulated by, or doing or seeking to do business with OSSB, R.C. 102.03(I) would apply to OSSB employees such that OSD would not be prohibited from paying for their travel, meals, and lodging on the fact-finding trip.<sup>1</sup> However, the payment or reimbursement of travel-related expenses must be related to the employees' participation in the fact-finding mission and limited to amounts essential for their travel. Adv. Op. No. 87-007.

### **Conclusion**

As explained more fully above, OSD is not prohibited from paying the expenses for the necessary travel of OSD officials and employees. OSD is prohibited from promising or giving, to any state employee, travel, meals, and lodging expenses, or any other thing of substantial value, if OSD is interested in matters before, regulated by, or doing or seeking to do business with the employee's state agency. Because OSD is interested in matters before OSFC, OSD is prohibited from providing travel, meals, and lodging for OSFC employees. Assuming no business or regulatory relationships exist between OSD and OSSB, OSD is not prohibited from providing reasonable and necessary travel-related expenses for OSSB employees.

In addition to the Ethics Law, state employees are also subject to the ethics requirements established in Executive Order 2007-01S. For more information on how the Executive Order applies to the type of situation you have described, please contact the Chief Ethics Officer for the state agencies involved.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on August 23, 2007. The Commission commends you for requesting guidance before taking any actions that could be prohibited by law.

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<sup>1</sup>If any of the employees in question is required to file a financial disclosure statement with the Ethics Commission under R.C. 102.02, he or she must disclose OSD as a source of travel expenses, including the amount of every payment or reimbursement he or she receives, and as a source of meals, food, or beverages, if the total value provided is \$100 or more. Adv. Op. No. 2004-01.

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The opinion is based on the facts presented. It is limited to questions arising under Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code and does not purport to interpret other laws or rules. If you have any questions or desire additional information, please feel free to contact this Office again.

Sincerely,

A handwritten signature in black ink that reads "Karen R. King". The signature is written in a cursive style with a large, stylized "K" and "K" at the end.

Karen R. King  
Staff Advisory Attorney