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September 28, 2011

Informal Opinion 2011-INF-0928

John O'Meara
[REDACTED]

Dear Mr. O'Meara:

On May 31, 2011, the Ohio Ethics Commission received your letter requesting an advisory opinion. You explained that you are the Executive Director of the Columbus and Franklin County Metropolitan Park District (Metro Parks). You have asked for guidance about potential conflicts of interest if you join a Mt. Everest expedition, which is one of the events proposed to the City of Columbus (City) Bicentennial Commission as part of the city's bicentennial celebration. You submitted information regarding this situation in your request letter and in a subsequent e-mail. This opinion, dated September 28, 2011, has been revised to correct some minor typographical errors in the opinion issued on September 26.

The Bicentennial Commission

- The City has created a Bicentennial Commission, which receives funds from the City and corporate donors;
- The Bicentennial Commission has solicited activities for inclusion in the city's 2012 bicentennial celebration;
- One group has proposed a Mt. Everest expedition to promote health and inspire achievement of higher goals; and
- The Bicentennial Commission will not provide public funds to the expedition team.

The Expedition Team

- The expedition team will seek private, corporate, and media sponsors to offset its costs and promote its events;

- The expedition team, to fulfill the objectives of the Bicentennial Commission of promoting health and inspiring achievement of high goals, will engage the community by presenting programs, before and after the climb, that promote physical fitness and outdoor activities;
- Some programs may occur at Metro Parks facilities;
- You desire to join the expedition team in your private capacity and have made an arrangement with the Board of the Metro Parks to use vacation time and unpaid leave while on the expedition; and
- While on the expedition, you would not be representing the Metro Parks in your official capacity as its Executive Director or covered by Workers' Compensation.

City and Metro Park Connections

- Metro Parks leases property and receives funds from the City for various purposes; and
- You have negotiated, approved, and signed these agreements in your capacity as the Metro Parks Executive Director.

Questions and Brief Answers

- 1:** Can the money raised from private and corporate sponsors be used to reduce your expenses associated with the expedition as long as Metro Parks does not have any contractual relationship with the sponsors?

Yes, although prohibited sponsors go beyond those parties with contractual relationships with Metroparks and include any parties that are doing or seeking to do business with, regulated by, or interested in matters before Metro Parks. Because you are prohibited from receiving any benefit from these sources, they would be prohibited from providing financial support to the team.

- 2:** If you are a member of the expedition team, are there ethical problems if the Columbus Bicentennial Commission provides funds to pay for Bicentennial programs and activities in which the Mt. Everest team participates?

Yes, if funds would be used by the team to defray any expedition costs. However, the Commission can support educational programs, publicity, and other items that are not expedition costs.

- 3:** As a member of the team, can you aid the expedition in seeking sponsors?

Yes. You cannot solicit sponsorships from any person, company, or organization that is regulated by, interested in matters before, or doing or seeking to do business with Metro Parks. However, you are not prohibited from soliciting donations for the expedition from individuals, companies, and organizations that do not have these kinds of relationships with Metro Parks.

4. Can the Dispatch Marketing Group be a corporate sponsor for the event?

No. However, the Dispatch Marketing Group can support educational programs, publicity, and other items that are not expedition costs. Covering the event or providing general publicity for the team or its individual members is not prohibited by the Ethics Law.

5. Can Metro Parks host programs and activities provided by the Mt. Everest expedition team, and can you participate in these programs and activities?

Yes. However, you are prohibited from using your position to secure any benefit for the team, such as the use of Metro Parks' facilities on terms that are more favorable than the terms on which the facilities are made available to other parties. Further, your participation in the programs must be done while on vacation or unpaid leave.

Conflict of Interest Prohibitions—R. C. 102.03(D) and (E)

As the Executive Director of the Metro Parks, you are a public employee¹ subject to R.C. 102.03(D) and (E), which read:

- (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.

Anything of value includes money and every other thing of value.² Any definite and direct pecuniary benefit resulting from the decisions of a public agency is within the definition of "anything of value."³ A thing of value is of such a character as to manifest an

improper influence upon a public official if it could impair his objectivity and independence of judgment in the performance of his public duties.⁴

R.C. 102.03(D) prohibits a public employee from using the authority or influence of his public position to secure anything of value for himself or another party with whom he has a close association.⁵ If a decision of the public employee's public agency will result in a definite and direct thing of value for the employee or for a party with which he closely associated, then R.C. 102.03(D) prohibits him from participating in the agency's decision-making process.⁶

R.C. 102.03(E) prohibits a public employee from merely soliciting or accepting a thing of value for himself or another party with which he is closely associated even if he has not used his authority or influence as a public employee to secure it.⁷

Benefiting from Sponsorships

Your first question is whether, if you are a member of the team, money raised from private and corporate sponsors who do not have any contractual relationship with Metro Parks can be used to reduce your expenses associated with the expedition.

The Ethics Commission has explained that R.C. 102.03(E) prohibits a public employee from accepting anything of value from a party that is regulated by, interested in matters before, or doing or seeking to do business with his public agency.⁸ R.C. 102.03(E) prohibits you from benefiting from any sponsorships to the expedition team by private or corporate sponsors that have these relationships with Metro Parks. For the Metro Parks, examples of these parties would include individuals, companies, associations, organizations, or others who are:

- Selling or attempting to sell goods or services to the Metro Parks;
- Owners of property that is contiguous to property owned by the Metro Parks;
- Owners of property that has been considered or identified by the Metro Parks (either internally or publicly) for future acquisition by the Metro Parks;
- Lobbying Metro Parks on behalf of clients or customers;
- Representing clients or customers before Metro Parks; or
- Definitely and directly affected by the decisions made by you or the Metro Parks board of trustees.

Employees of Metro Parks, because they are definitely and directly affected by the decisions made by you or the Metro Parks board of trustees, are among this group from whom you are prohibited from soliciting or accepting financial support for the expedition.

You would benefit from any financial support provided to the team if the sponsorships were used by the team to cover either your personal expenses (such as airfare to and from Nepal and personal equipment) or the expenses of all team members. Included among these costs would be personnel, transportation of baggage, fuel, food, climbing and other permits, telecommunication equipment and licenses, and oxygen and related supplies. Many Mt. Everest expedition companies charge climbers from \$65,000 to \$85,000 per person to cover these team costs. However, that figure does not include the personal expenses noted above which can start at \$2,500 for air travel and \$8,000 for personal equipment.

If the team were to receive sponsorships from individuals, companies, associations, organizations, or others who have the kinds of relationships with Metro Parks described above, R.C. 102.03(E) prohibits you from accepting any benefit from the sponsorships. All costs of mounting the expedition inure to the team as a whole and to each member of the team individually. If any prohibited source is a sponsor of the expedition, those funds would benefit you as an expedition team member. Because individual team members benefit from any sponsorship of the team, R.C. 102.03(E) prohibits you and the team from accepting any donation from a source that is regulated by, interested in matters before, or doing or seeking to do business with Metroparks.

However, if you are a member of the expedition team, neither you nor the team is prohibited from accepting the benefit of a donation from a sponsor who is not doing or seeking to do business with, regulated by, or interested in matters before Metro Parks. Further, the team can accept donations from any source to support educational programs, publicity, and other similar items provided that they are not expedition costs.

It should also be noted that there is a complementary restriction, R.C. 102.03(F), which applies to potential sponsors of the expedition. Any individuals, companies, associations, organizations, or other entities that are doing or are planning to do business with, are regulated by or know they are likely to be regulated by, or are interested in matters before Metro Parks are prohibited from promising or giving donations to support your expedition costs or the team's expedition costs because you would benefit from the donations.

Funding from the Bicentennial Commission

Your second question is whether, if you are a member of the expedition team, there are any ethical concerns if the Bicentennial Commission provides funds to pay for programs and activities involving the team. The Bicentennial Commission is a prohibited source of donations to the team's expedition costs. The restrictions discussed in the second paragraph on page 5 also apply to you and the team if the Bicentennial Commission provides financial support to the expedition.

Provided that the expedition team receives no Bicentennial Commission funds for the expedition costs, the Ethics Law would not prohibit the Bicentennial Commission from using funds to pay for educational programs, publicity, or other items that are part of the general observance of the Bicentennial even if the expedition team is involved in these events.

Seeking Sponsors

Your third question is whether you can personally solicit donations or sponsorships from individuals and corporations with which Metro Parks does not have a contractual relationship if you do not use your Metro Parks position to influence any donor's decision to donate.

You have stated that the expedition team will seek private, corporate, and media sponsors to offset its costs and promote its events. The Ethics Commission has held that R.C. 102.03(D) and (E) prohibit a public employee from soliciting, accepting, or using the authority of his public employment to seek things of value for himself or any other closely associated party from anyone that is regulated by, interested in matters before, or doing or seeking to do business with his public agency.⁹

As a member, you will be closely associated with the expedition team. Funds raised to help defray the cost of the expedition will benefit you along with the other members of the team. Funds raised from anyone who is regulated by, interested in matters before, or doing or seeking to do business with Metro Parks would be of such a character as to manifest a substantial and improper influence upon you with respect to your duties as the Executive Director of Metro Parks regarding the sponsors. The amount of support received, or the fact that an entity did or did not become a sponsor, could impair your objectivity and independence of judgment in the performance of your official decisions in future matters affecting these parties.

Therefore, R.C. 102.03(D) and (E) prohibit you from personally soliciting funds from any individual, organization, or corporation that is doing or seeking to do business with, regulated by, or interested in matters before the Metro Parks. Your question demonstrates that you are aware of this prohibition regarding sponsors that are doing business with Metro Parks. You are also prohibited from using Metro Parks' time, facilities, and resources to solicit funds or other support for the expedition team.

However, you are not prohibited from soliciting donations or sponsorships from individuals and corporations that are not doing or seeking to do business with, regulated by, or interested in matters before Metro Parks.

Dispatch Marketing Group

Your fourth question is whether the Dispatch Marketing Group can be a corporate sponsor for the expedition event. You have explained that the Dispatch Marketing Group is doing business with Metro Parks.

As explained above, you and the team are prohibited from accepting donations or sponsorships to fund the expedition from any corporation that is doing business with the Metro Parks. Therefore, R.C. 102.03(E) prohibits the team from accepting any financial support from the Dispatch Marketing Group. R.C. 102.03(D) and (E) also prohibit you from soliciting or using your position as Executive Director of the Metro Parks to secure any financial support for the expedition from the Dispatch Marketing Group. A separate restriction, R.C. 102.03(F), prohibits the Dispatch Marketing Group from providing anything of value to you.

Provided that the expedition team receives no financial support from the Dispatch Marketing Group, the Ethics Law would not prohibit the Dispatch Marketing Group from using funds to pay for educational programs, publicity, or other items public programs and promotions that are part of the general observance of the Bicentennial and include the expedition team. General publicity for the team or its individual members is not prohibited by the Ethics Law.

Use of Metro Parks' Facilities

Your final question is whether Metro Parks can host programs and activities provided by the Everest team, and whether it is permissible for you to provide those programs and activities.

The Ethics Law does not prohibit the expedition team from using Metro Parks' facilities in the same manner and under the same terms as any other person in the community. However, if you were to secure any benefit for the team regarding its use of Metro Parks' facilities, that benefit would fall within the definition of "anything of value."

Therefore, you are prohibited from participating, as the Metro Parks Executive Director, in any decision by the Metro Parks board that would enable the Bicentennial Commission or expedition team to use Metro Parks' facilities for the presentation of team programs. You are prohibited from using the authority or influence of your Metro Parks employment to secure an agreement for the use of Metro Parks' facilities by the expedition team for the presentation of its programs on terms that are selective and more favorable than the terms available to any other person.

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However, you would not be prohibited from participating in the presentation of expedition team programs at Metro Park facilities as an expedition team member in your private capacity. Any personal participation by yourself in presentation of the expedition team's programs must be done while on vacation or unpaid leave.

After the Expedition

Once the Mt. Everest expedition has concluded, you should be watchful for any matters that come before Metro Parks affecting donors to the expedition team. There may be the appearance of impropriety if you act on any matter affecting a donor to the team even after the expedition is over.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on September 26, 2011. This opinion is based on the facts presented. It is limited to questions arising under the Ohio Ethics Law and related statutes, set forth in Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code. This advisory opinion does not represent any view by the Commission as to the advisability of the activity you have described or whether it constitutes good public policy. The opinion does not purport to interpret other laws or rules.

If you have any questions or need additional information, please contact the Commission again.

Sincerely,



Jennifer A. Hardin
Chief Advisory Attorney

cc: Greg Lashutka, Chair
Columbus and Franklin County Metropolitan Park District

The Honorable Michael B. Coleman
Mayor, City of Columbus

Ty Marsh, Chair, Organizing Committee
Columbus Bicentennial Commission

The Ohio Ethics Commission Advisory Opinions referenced in this opinion are available on the Commission's Web site: www.ethics.ohio.gov.

¹ 102.01(B) and (C); R.C. 1545.01 (addressing the formation of park districts).

² R.C. 1.03 and 102.01(G).

³ Ohio Ethics Commission Advisory Opinions No. 88-004 and 92-019.

⁴ Adv. Op. No. 2001-03.

⁵ Adv. Op. No. 88-004.

⁶ Adv. Op. No. 90-008.

⁷ Adv. Ops. No. 87-006 and 89-006.

⁸ Adv. Ops. No. 85-012 and 86-011.

⁹ Adv. Ops. No. 85-012 and 86-011.