

OHIO ETHICS COMMISSION

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Advisory Opinion Number 2000-04
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Syllabus by the Commission:

- (1) Division (A)(1) of Section 2921.43 of the Revised Code prohibits public school teachers, administrators, and other public school officials and employees from accepting or soliciting any form of compensation from a private tour company, or any other source, except their public employer, for scheduling, organizing, chaperoning, or performing any other duties associated with, a school trip;
- (2) Division (A)(4) of Section 2921.42 of the Revised Code prohibits public school teachers, administrators, and other public school officials and employees from having a definite and direct personal financial or fiduciary interest in a contract entered into by or for the use of their school district;
- (3) Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit public school teachers who perform or have the authority to perform administrative or supervisory functions, public school administrators, and other public school officials and employees from soliciting, accepting, or using their respective positions to secure a personal and pecuniary benefit from a private tour company that does business with their school district;
- (4) Division (A)(1) of Section 2921.43 of the Revised Code prohibits a private tour company from compensating a public school administrator, teacher, or other public school official or employee for performing the duties associated with scheduling, organizing, chaperoning, or performing any other duties associated with, a school trip;
- (5) Division (E) of Section 102.03 of the Revised Code does not prohibit public school teachers, public school administrators, and other public school officials and employees from accepting, from a private tour company, necessary travel expenses to accompany students on a school trip, so long as the travel expenses are provided in connection with the contract between the district and the tour company to provide tour services;
- (6) Division (A)(1) of Section 2921.43 of the Revised Code does not prohibit any public school administrator, teacher, or other public school official or employee, from accepting, from a private tour company, necessary travel expenses to accompany students on a

school trip, so long as the travel expenses are provided in connection with the contract between the district and the tour company to provide tour services;

(7) Because the application of the Ethics Law to school board members may be different due to their financial and fiduciary responsibilities to the school district, the conclusions of this opinion do not apply to school board members.

* * * * *

You have asked whether the Ohio Ethics Law and related statutes prohibit public school teachers, administrators, and other public school officials and employees from accepting compensation from a private tour company for performing administrative and other duties associated with a school trip, or acting as chaperones on school trips.

You have provided a typical scenario for these kinds of trips. You have stated that a public school district sponsors an eighth-grade trip to Washington, D.C. The participating students pay for the trip and some school money is also expended. The school system enters into a contract with the private tour company and collects the student fees to be given to the tour company.

A school district administrator or teacher selects and recommends a tour company to plan and schedule the trip. School teachers, administrators, and other public school officials and employees may also accompany the students as chaperones on the trips. The tour company may wish to provide payment for the school personnel for selecting the company, providing administrative services, or acting as a chaperone. Finally, the tour company may wish to provide a free trip for any school personnel who act as chaperones on the tour.

These questions implicate several provisions of the Ohio Ethics Law, as discussed in this Advisory Opinion. This opinion will first consider the question of compensation paid to school teachers, administrators, and other public school officials and employees who select the company, provide administrative services, or act as chaperones. The opinion will then consider the question of free trips provided to school personnel who accompany the students as chaperones. Finally, the opinion will address the application of the Ethics Law to the tour companies that wish to offer compensation or travel expenses to any public school personnel.

As explained more fully below, the Ethics Law and related statutes prohibit public school officials and employees from accepting, from any source except their public employer, and a private tour company from providing to public school officials and employees, monetary compensation for performing any duties associated with a school trip. The Ethics Law and related statutes do not, however, prohibit public school officials and employees from accepting, from a private tour company, necessary and appropriate travel expenses to accompany students on a school trip, so long as the travel expenses are provided pursuant to an agreement between the district and the tour company to provide tour services. In addition, the school district is not prohibited from providing additional compensation to public school officials and employees who perform duties associated with a school trip as a part of their employment with the district. The application of the Ethics Law to school board members may be different due to their financial

and fiduciary responsibility to the district. Therefore, the conclusions of this opinion do not apply to school board members.

Receiving Compensation From a Private Tour Company—R.C. 2921.43(A)(1)

First, your questions implicate R.C. 2921.43(A)(1), which provides the following:

(A) No public servant shall knowingly solicit and no person shall knowingly promise or give to a public servant either of the following:

(1) Any compensation, other than allowed by divisions (G), (H), and (I) of section 102.03 of the Revised Code or other provisions of law, to perform his 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;

A public school administrator or teacher, or other public school official or employee, is a "public servant" as defined by R.C. 2921.01(B), and, as such, is subject to the prohibition of R.C. 2921.43(A)(1). See Ohio Ethics Commission Advisory Opinion No. 93-017.

R.C. 2921.43(A)(1) prohibits a public servant from accepting any compensation, other than as allowed by R.C. 102.03(G)-(I) or other provision of law, to perform any act in his public capacity or generally perform the duties of his public position. Division (G) of Section 102.03 relates to campaign contributions; Division (H) relates to honoraria, and travel, meal, and lodging expenses incurred by a public official or employee in making a speech or other personal appearance; and Division (I) relates to conference fees and travel, meal, and lodging expenses incurred by a public official or employee in attending a conference, seminar, or similar event. The exceptions in Divisions (G), (H), and (I) do not apply to the questions that you have presented.

In the situation that has been presented to the Commission, public school teachers, administrators, and other public school officials and employees are being offered compensation from private tour companies for performing administrative and other duties related to school field trips and for acting as chaperones on school trips. It is clear that trips of this kind are offered to students as part of the educational mission of the school district. These public school teachers, administrators, and other officials and employees may also receive offers of compensation for recommending a particular tour company to provide services to the public school. Because the trips are part of the educational mission of the school, the school personnel involved are performing these administrative duties, and acting as chaperones on school trips, as a part of their employment with the district and may be receiving compensation from the district for performing the duties.

R.C. 2921.43(A)(1) prohibits the public school teachers, administrators, and other public school officials and employees from accepting compensation from sources other than their public agency for performing their official duties. The payment of a fee to the public school administrator or teacher for the performance of his or her official duties would be considered

compensation. Therefore, R.C. 2921.43(A)(1) prohibits public school teachers, administrators, and other public school officials and employees from accepting the payment of monetary compensation from a private tour company for performing duties related to school field trips.

R.C. 2921.43(A)(1) does not prohibit the public school teachers, administrators, and other public school officials and employees from accepting additional compensation, or the payment of expenses, from their school district for performing duties associated with a school trip, so long as the payments are not reimbursed by the private tour promoter. See Adv. Op. No. 89-013, and discussion below. Further, R.C. 2921.43(A)(1) does not prohibit the school district from receiving a benefit from the private tour company in return for providing business to the private tour company, as long as an individual teacher or administrator does not personally benefit. In other words, R.C. 2921.43(A)(1) does not prohibit the school district from compensating their teachers, administrators, and other public school officials and employees for performing duties associated with a school trip. This compensation may be provided by the school district in the form of additional monetary compensation or an expense-paid trip.

Having an Interest in a School Contract—R.C. 2921.42(A)(4)

Division (A)(4) of R.C. 2921.42 is also applicable to the situation presented to the Commission. R.C. 2921.42(A)(4) provides that no public official shall knowingly:

Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which he is connected.

The term "public official" is defined to include "any elected or appointed officer, or employee, or agent of . . . any political subdivision." See R.C. 2921.01(A). A teacher or other instructor, appointed or employed by a school district, is an employee of a political subdivision, regardless of her duties, and is therefore a "public official" for purposes of the prohibition of R.C. 2921.42(A)(4).

The term "public contract" is defined, for purposes of R.C. 2921.42, in Division (G)(1)(a) of that section, to include the purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of the state, any of its political subdivisions, or any agency or instrumentality of either. Thus, the acquisition of tour services by the school district is a public contract.

R.C. 2921.42(A)(4) prohibits a member of a public body from having a personal financial or fiduciary interest in the profits or benefits of a public contract entered into by a political subdivision or governmental agency or instrumentality with which he is "connected." A teacher, administrator, or other school employee or official is connected with the school district by which he or she is employed, or that he or she serves, for purposes of R.C. 2921.42(A)(4). Adv. Op. No. 87-002. Therefore, R.C. 2921.42(A)(4) prohibits a teacher, administrator, or other school employee or official from having a personal interest in the acquisition of tour services by the school district.

If a teacher, administrator, or other school employee or official were to accept any form of monetary compensation for scheduling, arranging, or chaperoning a school trip, from a private tour company, he or she would have a prohibited interest in the public contract, unless compliance with each of the four requirements of the exception of R.C. 2921.42(C) could be demonstrated. It is unnecessary to discuss the exception, however, because teachers, administrators, and other school employees and officials are prohibited from accepting, by virtue of R.C. 2921.43(A)(1), any form of compensation from a private tour company for arranging, scheduling, or chaperoning a school trip. Therefore, even if the school employees and officials were able to demonstrate compliance with each of the four requirements of the exception to R.C. 2921.42(A)(4), R.C. 2921.43(A)(1) prohibits each of these individuals from accepting any form of monetary compensation from a private tour company for scheduling, organizing, chaperoning, or performing any other duties associated with, a school trip.

It should be noted, however, that additional public contract restrictions apply for school district officials whose duties include participating in the authorization of district contracts, such as the superintendent, treasurer, and business manager. R.C. 2921.42(A)(1) prohibits these school officials from authorizing, or securing authorization of, any public contract, including the school district's acquisition of services from a private tour company, in which they would have a definite and direct interest. Further, R.C. 2921.42(A)(3) prohibits a public school official or employee from profiting from any contract that she, or a body of which she was a member, authorized, unless the contract is let by competitive bidding to the lowest and best bidder.

Using the Authority or Influence of a Public Position—R.C. 102.03(D) and (E)

Two other provisions of the Ethics Law which are applicable to the questions presently before the Commission are R.C. 102.03(D) and (E), which provide the following:

(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.

The term "public official or employee" is defined for purposes of R.C. 102.03 to include any person who is an employee of any public agency. See R.C. 102.01(B) and (C). The Commission has previously held that "with the exception of teachers, instructors, professors, or other kinds of educators whose positions do not involve the performance of, or authority to perform, administrative or supervisory functions, every official and employee of every school district in the state is considered a 'public official or employee' as defined in R.C. 102.01(B)." See Adv. Op. No. 93-017 (emphasis added). Therefore, a school district administrator is a public official for purposes of R.C. 102.03(D) and (E).

As stated above, the definition of "public official or employee" for purposes of these provisions of the Ethics Law, does not include a person who is a teacher, instructor, professor, or any other kind of educator whose position does not involve the performance of, or the authority to perform, administrative or supervisory functions. Id. However, any teacher or other kind of educator whose position involves the performance of, or authority to perform, any duties that involve managing or directing the activities of the school district or other school employee, or supervising other school employees, is a "public official or employee" for purposes of R.C. 102.01(B). See Adv. Op. No. 93-017. For instance, an educator who is the head of an academic department and establishes the curriculum, teaching activities, or other matters for the department is a teacher whose position involves the performance of administrative duties. Id. In addition, an instructor who also acts as an athletic coach or band director, for example, and supervises the activities of assistants, is an educator whose position involves the performance of supervisory duties. See generally Adv. Op. No. 91-006. The question of whether a particular public school teacher is a public official or employee subject to R.C. 102.03(D) and (E) depends on the job duties of the employee involved.

The term "anything of value" is defined for purposes of R.C. 102.03 in R.C. 1.03 to include money and every other thing of value. See R.C. 102.01(G). A definite, pecuniary benefit is considered to be a thing of value under R.C. 102.03. See Adv. Ops. No. 79-008, 85-006, 88-004, and 89-002. Therefore, compensation that a teacher, administrator, or other school official or employee would receive from a tour company or his or her school district would be within the definition of "anything of value." In addition, an expense-paid trip would also be within the definition of "anything of value."

Divisions (D) and (E) of Section 102.03 prohibit a public official or employee from accepting, soliciting, or using the authority or influence of his position to secure anything of value, including compensation, from a party that is interested in matters before, regulated by, or doing or seeking to do business with the agency with which the official or employee serves. See Adv. Ops. No. 80-004, 84-010, 86-011, and 89-013. In these situations, the provision of substantial things of value from these sources could manifest a substantial and improper influence on a public official or employee with respect to his or her duties.

Therefore, R.C. 102.03(D) and (E) prohibit public school officials and employees, except those school employees and officials whose positions do not involve the performance of, or the authority to perform, administrative or supervisory functions, from soliciting or accepting anything of value, including compensation, from a private tour company that is doing business with their school district. The Commission has stated, with respect to compensation for outside employment, that a public official or employee is not prohibited from soliciting or accepting compensation for outside employment from a party who is doing business with his public agency if the official or employee is able to fully withdraw from all matters that affect the source of the compensation, and, where required, the public employer is aware of the potential conflict. See Adv. Ops. No. 89-006 and 96-004. In the situation that you have described, however, the school officials and employees are directly involved with the private tour companies that are doing business with their respective school districts. Because it would be impossible for the officials and employees to withdraw from performing duties related to the private tour companies, withdrawal does not apply in this instance.

Compensating a Public Official for Official Duties—R.C. 102.03(F) and R.C. 2921.43(A)(1)

Tour companies and other private companies that deal with public school teachers, administrators, and other public school officials and employees should also be aware that, in certain instances, provisions of the Ethics Law and related statutes restrict their actions. In particular, private companies are governed by provisions in R.C. 102.03(F) and 2921.43(A)(1).

R.C. 2921.43(A)(1), as discussed above, provides that, with limited exceptions not applicable to the questions presently before the Commission, no person shall knowingly promise or give to a public servant any compensation to perform his 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. Based on this statutory provision, a private tour company, and any other person except the school district, is prohibited from providing compensation to a public school teacher or administrator for performing any of the duties associated with scheduling, organizing, chaperoning, or performing any other duties associated with, a school trip. As explained above, fees, commissions, and other benefits, are considered compensation for purposes of R.C. 2921.43(A)(1). A private tour company is prohibited from providing these, or any other, forms of compensation to a public school teacher or administrator.

R.C. 102.03(F) is also applicable to the private tour company and any other person who does business with the school district in your questions. R.C. 102.03(F) provides the following:

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.

As explained above, a public school teacher's or administrator's acceptance of compensation from a private tour company in the situation you have described could be of such a character as to manifest a substantial and improper influence upon the public school teacher or administrator with respect to his or her duties. Therefore, R.C. 102.03(F) prohibits a private tour company from providing such compensation, either directly or indirectly through the school district. However, the provisions of R.C. 102.03 do not apply to teachers whose positions do not involve the performance of, or the authority to perform, administrative or supervisory functions. Nonetheless, R.C. 2921.43(A)(1) would prohibit a private tour company from providing compensation to a teacher whose position does not involve the performance of, or the authority to perform, administrative or supervisory functions.

Free Trip for School Personnel Accompanying Students As Chaperones on Trip

You have also asked whether the Ethics Law and related statutes prohibit a teacher, administrator, or other public school official or employee from accepting, and a private tour company from providing, a free trip if the school official or employee accompanies students as a chaperone on the trip. It is the Commission's understanding that this trip would customarily be provided to the school district, for use by a school employee accompanying the students as a

chaperone, upon the school and its students having purchased a specified number of trips from the private tour company.

As stated above, R.C. 102.03(D) and (E) would generally prohibit a teacher who performs any administrative or supervisory functions from accepting anything of value from a vendor to the school district. See Adv. Ops. No. 89-013 and 89-014. R.C. 102.03(F) would generally prohibit a vendor from giving anything of value to school teachers who perform administrative or supervisory functions. See Adv. Op. No. 90-001. R.C. 2921.43(A) generally prohibits any school teacher, regardless of job duties, from accepting supplemental compensation for the performance of his or her job duties, from a vendor to the school district. See Adv. Ops. No. 89-013 and 89-014. R.C. 2921.43(A) generally prohibits a vendor to a school district from providing supplemental compensation to a school teacher for the performance of her job duties.

In the Advisory Opinions listed above, the Commission has concluded that travel, meals, and lodging, or expenses for travel, meals, and lodging, fall within the definition of "anything of value," for purposes of R.C. 102.03(E), and "compensation," for purposes of R.C. 2921.43(A). Therefore, a school teacher is generally prohibited from soliciting or accepting travel, meals, and lodging, or expenses for travel, meals, and lodging, from a vendor to the school district.

However, in all of the instances where the Commission has previously considered travel, meals, and lodging provided by a vendor or potential vendor, the vendor was selling to, or attempting to sell to, the public agency goods or services unrelated to the travel itself. For example, in Advisory Opinion No. 89-013, the Commission considered whether state officials and employees were prohibited from accepting travel, meals, and lodging provided by a potential vendor in order for the state officials and employees to view the vendor's product. See also Adv. Op. No. 89-014 (considering whether county officials and employees can accept travel, meals, and lodging provided by a potential vendor in order to see the vendor's products in operation).

By contrast, in the situation you have presented to the Commission, the vendor is providing travel services, and will offer a free trip to a school district employee when a specified number of trips have already been purchased by the school and its students. The purpose of the trip of the employee is to accompany students on an educational endeavor. This is comparable to a situation where a vendor of computers offers a public agency a free computer with the purchase of a specified number of similar computers. Therefore, the question becomes whether a school teacher can accept a trip provided by a private tour company that would otherwise sell the same trip to the school district.

Trip Provided by Vendor of Travel Services

In the situation you have set forth, the school system enters into an agreement with the private tour company whereby some school funds and some student funds are expended for the services of the tour company in planning and facilitating the tour. In this instance, if the agreement includes the express requirement that when the school district and its students purchase a specified number of tours, the private tour company will cover the essential expenses for a specified number of school personnel to accompany the students on the trip, the school teachers, administrators, and other public school officials and employees could accept the travel

expenses from the private tour company. See generally Adv. Op. No. 87-007 (a public official or employee is not prohibited from accepting travel, meal, and lodging payments from a vendor to the public agency so long as the requirement for the payments is included in the contract between the parties, and in the bid specifications for the contract). The private tour company can include the cost of the trips for school personnel in the overall cost of the contract, and the school district would ultimately pay for those trips as a part of the contract fee. Further, where the cost of the trips is ultimately borne by the school district through the agreement, travel expenses obtained from the vendor would not be supplemental compensation, and R.C. 2921.43(A) would not prohibit the public official or employee from accepting travel expenses from a private tour company.

However, in order for a school teacher to accept travel, meals, and lodging in such an instance, the contract between the parties must clearly and objectively state the number of individuals that will be necessary to accompany a set number of students, and must limit, to those reasonably necessary individuals, the number of trips that the private tour company will provide. Further, it must be clear that the travel expenses covered by the private tour company are limited to the amount that is essential for the school personnel to accompany the students. The accommodations and meals provided to the school personnel cannot be substantially different from those provided to the students. School personnel also cannot accept travel or expenses for any purpose that is unrelated to the school trips where they are accompanying students. It must be clear that the trip is part of the overall educational mission performed by the district and that it serves an educational purpose for students to undertake the travel. Finally, a school teacher would be prohibited from using his or her position to secure free travel, as a chaperone, for a family member, such as a spouse. If a family member were to accompany a teacher on these trips, the teacher or family member would be responsible for covering any expenses (such as airfare, extra lodging charges, and meals) attendant to the family member's travel with the group.


Compensation from the School District to the School Employee

The final question raised by your inquiry is whether the Ethics Law and related statutes prohibit the school district from paying its officials and employees to perform additional duties associated with scheduling, organizing, chaperoning, or performing any other duties associated with a school trip. The Ethics Law and related statutes do not prohibit the school district from providing compensation for its officials and employees to perform these kinds of duties, so long as the duties are a part of the contractual relationship between the school district and the teacher. The school district has the discretion to set the salary for its employees at whatever level it feels is appropriate and within the law. However, the school district would be prohibited from providing compensation for its officials and employees to perform additional duties connected with school trips if the school district is paid or reimbursed by a private tour company (except in connection with a competitive bid) for the compensation or benefits that it provides to its officials or employees for performing these additional duties. See Adv. Op. No. 89-013.

School Board Members

In this opinion, the Commission has considered the application of the Ethics Law to questions presented involving school district employees. In the interest of providing a complete answer, the Commission has provided an interpretation of the law as it applies to most school district officials and employees. It must be noted, however, that the Commission does not consider, in this opinion, the application of these restrictions to school board members, and that the conclusions in this opinion do not apply to school board members. If a situation should arise where a school board member would be presented with the opportunity to receive any form of compensation, from any source, including the school district that he serves, for the performance of any duties associated with a school trip, the school board member should contact the Ohio Ethics Commission for further information and guidance.

This advisory opinion is based on the facts presented. It is limited to questions arising under Chapter 102. and Sections 2921.42, 2921.421, and 2921.43 of the Revised Code, and does not purport to interpret other laws or rules. Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that: (1) Division (A)(1) of Section 2921.43 of the Revised Code prohibits public school teachers, administrators, and other public school officials and employees from accepting or soliciting any form of compensation from a private tour company, or any other source, except their public employer, for scheduling, organizing, chaperoning, or performing any other duties associated with, a school trip; (2) Division (A)(4) of Section 2921.42 of the Revised Code prohibits public school teachers, administrators, and other public school officials and employees from having a definite and direct personal financial or fiduciary interest in a contract entered into by or for the use of their school district; (3) Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit public school teachers who perform or have the authority to perform administrative or supervisory functions, public school administrators, and other public school officials and employees from soliciting, accepting, or using their respective positions to secure a personal and pecuniary benefit from a private tour company that does business with their school district; (4) Division (A)(1) of Section 2921.43 of the Revised Code prohibits a private tour company from compensating a public school administrator, teacher, or other public school official or employee for performing the duties associated with scheduling, organizing, chaperoning, or performing any other duties associated with, a school trip; (5) Division (E) of Section 102.03 of the Revised Code does not prohibit public school teachers, public school administrators, and other public school officials and employees from accepting, from a private tour company, necessary travel expenses to accompany students on a school trip, so long as the travel expenses are provided in connection with the contract between the district and the tour company to provide tour services; (6) Division (A)(1) of Section 2921.43 of the Revised Code does not prohibit any public school administrator, teacher, or other public school official or employee, from accepting, from a private tour company, necessary travel expenses to accompany students on a school trip, so long as the travel expenses are provided in connection with the contract between the district and the tour company to provide tour services; and (7) Because the application of the Ethics Law to school board members may be different due to their financial and fiduciary responsibilities to the school district, the conclusions of this opinion do not apply to school board members.


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