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INFORMATION SHEET: ADVISORY OPINION NO. 2009-04
OFFICIAL SEEKING OR ACCEPTING BENEFIT AVAILABLE TO CITIZENS

What is the question addressed in the opinion?

If a public agency offers benefits to citizens in the jurisdiction, or offers citizens a process for resolving disputes, can public officials or employees connected with the agency seek the same benefit or pursue the same remedy?

What is the answer in the opinion?

Yes. Public officials and employees serving a public agency can apply for or accept the benefits or pursue the remedies that the agency offers to all citizens in the jurisdiction provided that they: (1) meet all qualifications for the benefit or remedy that are required of any other citizen; and (2) conform with all rules and procedures required of any other applicant for the benefit or remedy. Further, an official or employee applying for a benefit or seeking a remedy must refrain from using his or her public position, in any way, to secure a quicker, or more favorable or complete, consideration of his or her application than the consideration that is available to any other citizen.

To whom does this opinion apply?

The conclusions in this opinion apply to all individuals who are elected or appointed to, or employed by, any public agency, including but not limited to any state agency, county, city, township, school district, public library, and regional authority, regardless of whether the person is: (1) compensated or uncompensated; (2) serving full time or part time; or (3) serving in a temporary or permanent position.

When did the conclusions in this opinion become effective?

The opinion became effective when rendered by the Commission at its meeting on September 23, 2009.

For More Information, Please Contact:

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ADVISORY OPINION NO. 2009-04 IS ATTACHED.**

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Advisory Opinion
Number 2009-04
September 23, 2009

Syllabus by the Commission:

- (1) Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a public official from soliciting, or using his or her public position to secure, anything of value that is of such a character as to manifest a substantial and improper influence on the official with respect to the performance of his or her duties;
- (2) R.C. 102.03(D) and (E) do not prohibit a public official from seeking or accepting a benefit or pursuing a remedy offered by the public agency he or she serves, provided that the official meets the qualifications for the benefit or remedy and that it is available to any citizen in the community who meets the qualifications, as further described in the opinion;
- (3) R.C. 102.03(D) and (E) prohibit a public official from soliciting or accepting any benefits that are greater than those offered by the public agency he or she serves to other citizens in the community, and from using his or her position to secure more favorable treatment from officials or employees in the agency, as further described in the opinion.

* * * *

The Commission has been asked whether an official or employee serving a public agency can seek a benefit, or pursue a remedy, that the agency makes available to citizens in the community. For example, the Commission has been asked whether a county official is permitted to file a complaint with the county board of revision regarding the valuation of the official's property.

Soliciting or Using Position to Secure a Thing of Value

The question before the Commission raises issues under R.C. 102.03(D) and (E), which provide:

- (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.

A “**public official or employee**” is “any person who is elected or appointed to an office or is an employee of any public agency.” R.C. 102.01(B).¹ A “**public agency**” is “the general assembly, all courts, any department, division, institution, board, commission, authority, bureau or other instrumentality of the state, a county, city, village, or township, the five state retirement systems, or any other governmental entity.” R.C. 102.01(C).

Therefore, a “public official or employee” subject to R.C. 102.03(D) and (E) includes any person who is elected or appointed to, or employed by, any public agency, including but not limited to any state agency, county, city, township, school district, public library, and regional authority. The restrictions apply regardless of whether the official or employee is serving in a position that is: (1) compensated or uncompensated; (2) full-time or part-time; or (3) temporary or permanent.

The term “**anything of value**” is defined to include money and every other thing of value. R.C. 102.03(G); 1.03. Programs that offer benefits to citizens, or allow citizens to pursue remedies to grievances against the government, fall within the definition of anything of value.

R.C. 102.03(D) prohibits a public official from using his or her authority or influence to secure anything of value where the thing of value could impair the official's objectivity and independence of judgment. Adv. Ops. No. 87-006, 89-006, and 90-013. This provision applies when a decision on a matter that is before the official would provide a definite and direct financial benefit or detriment to his or her private interests. Adv. Op. No. 88-004. In such a situation, the thing of value is of such a character that it could bias his or her discretion and judgment if he or she were to participate in the matter. *Id.* As a result, a public official is required to refrain from participating in discussions, deliberations, or otherwise using his or her official position, formally or informally, with regard to any matter before his or her public agency that will directly affect his private financial interests. *Id.* The official cannot make a decision that affects his or her own interests, and cannot delegate his or her decision-making authority on the matter to a subordinate official or employee.

¹ Teachers, instructors, and other educators are excluded from the prohibitions set forth in R.C. 102.03(D) and (E) provided that they do not perform or have any authority to perform supervisory or administrative functions. See Adv. Op. No. 2001-04.

R.C. 102.03(E) prohibits the official from merely soliciting or accepting anything of value for the official, even if he or she does not use the authority or influence of his or her public position to secure it, if the thing of value is of such a character as to have a substantial or improper influence on the official. Therefore, a public official may be prohibited from simply accepting or asking for a thing of value depending on the specific facts.

Seeking Benefit or Pursuing Remedy Available to Other Citizens

The limits in the Ethics Law and related statutes must be applied in a manner that balances them with the rights afforded to all citizens. To that end, the Ethics Commission has stated that a public official is not prohibited from participating in matters that provide a *uniform benefit* to all citizens within a political subdivision, or a large portion thereof. See Adv. Ops. No. 88-004 and 92-013.

Further, in Advisory Opinion No. 92-019, the Ethics Commission found that a council member was not prohibited from advocating, as an individual, his own interests in a matter before council that affected the value of his real property. However, the council member can represent only his own interests, cannot be compensated to represent any other person's interests, cannot participate in the matter as a council member, and cannot use his position in any way to influence fellow council members.

Therefore, when a public official seeks a benefit or pursues a remedy that is available to any other citizen regardless of whether the citizen is a public official or employee, the benefit or remedy is not of such a character as to manifest a substantial and improper influence on the official or employee with respect to the performance of his or her own public duties. However, the official must: (1) meet all qualifications for the benefit or remedy that are required of any other citizen; (2) conform with all rules and procedures required of any other applicant for the benefit or remedy; and (3) refrain from using his or her public position, in any way, to secure a quicker, or more favorable or complete, consideration of his or her application than the consideration that is available to any other citizen. For example, the official cannot process or access his or her own application using the equipment of the public agency.

Example—Valuation of Real Property

One specific question that has been posed to the Commission involves the valuation of real property for tax purposes and an appeal of the value. The value of each house in a county and the land on which it is situated is determined by the county auditor according to the rules and methods set forth by the Ohio Department of Taxation. R.C. 5713.03. These rules set forth objective standards for which the value of property is determined, as well as the methodology for the board of revision to assess the property's appraised value when evaluating homeowner complaints. See Ohio Administrative Code Rules 5703-25-05, 5703-25-06, 5703-25-07, 5703-25-11, and 5703-25-12. While a reduction in the value of a person's real property would not normally seem to be a benefit to the owner, the reduction in the real estate valuation results in a savings in property taxes. This savings is a thing of value for purposes of 102.03.

If a property owner wants to challenge the current appraisal of his or her property, the owner can file a petition with the county Board of Revision. R.C. 5715.19. The Board of Revision is composed of the county auditor, county treasurer, and president of the board of county commissioners. R.C. 5715.02. The Board of Revision can create as many hearing boards as necessary to expeditiously hear complaints. *Id.* The elected officers can appoint qualified employees of their offices to serve on either the Board of Revision or the hearing boards. *Id.* The Board of Revision is responsible for hearing complaints and revising appraisals made on real property for the purposes of taxation. R.C. 5715.01(B). Filing a complaint with the county board of revision is a remedy afforded to every property owner in the county.

Therefore, because the complaint process is available to every property owner in the county, R.C. 102.03(D) does not prohibit a county official from pursuing this remedy to challenge the value of his or her residence. The official must pursue the remedy in the same manner as any other property owner by filing a complaint. The official is prohibited from using his or her public position, in any way, to secure the outcome of the complaint.

If the official is one of the three statutory members of the Board of Revision, he or she is prohibited from participating in the Board's consideration of his or her complaint. If the official has appointed an employee to serve in his or her stead on the Board of Revision, that employee is also prohibited from participating in the Board's consideration of the official's complaint.

The Ethics Commission has cautioned that when a public official is pursuing, as a citizen, a course of action that is available to other citizens, the official must follow the same procedures, comply with the same requirements, and be limited to the same access to public officials and employees and information as any citizen who is not a public official. Adv. Op. No. 92-019. For example, the official cannot access agency files or computer databases in a way that is not available to individuals other than the official. Thus, when filing a complaint with the Board of Revision, the county official must follow the procedures set forth by the Board that are required of any citizen in the county. The official is prohibited from using his or her influence to get an expedited hearing, but must wait until the complaint is scheduled.

R.C. 102.03(D) further prohibits the official from using his or her public position to influence any member of the Board of Revision with respect to the official's complaint made with the Board. R.C. 102.03(D) and (E) prohibits the official from discussing the value of the property and the official's complaint with any member of the Board in any context other than the access available to any other private citizen. The official is prohibited from soliciting, using his or her public position to secure, or accepting a benefit that is selective, differential, or in disproportion to the benefits provided to similarly situated homeowners. Adv. Op. No. 92-019.

Disclosure or Use of Confidential Information—R.C. 102.03(B)

All public officials should also be aware that R.C. 102.03(B) prohibits a present or former public official from disclosing or using, without appropriate authorization, any confidential information he or she acquired in the course of the official's duties. No time limitation exists for this prohibition, and it is effective while a person serves in a public position and after he or she leaves public service. Adv. Op. No. 88-009. This provision prohibits a public official from using any confidential information that was acquired through his or her public service to secure a benefit or pursue a remedy.

For example, if the official is privy to confidential information about the agency's consideration of a benefit, and his or her use of the information would make his or her application more favorably received, the official is prohibited from using the information when applying for the benefit.

Grants, Loans, and Contracts

This advisory opinion considers the application of the law if a public official or employee is seeking a benefit (such as inclusion in a program) or pursuing a remedy (such as appealing a decision of a public official or agency) that is available to any other citizen. This opinion does *not* consider whether a public official or employee is prohibited from seeking or accepting grants, loans, or contracts from the agency he or she serves. In addition to R.C. 102.03(D) and (E), the public contract law (R.C. 2921.42) would apply to any public official or employee seeking grants, loans, or contracts from his or her own public agency. There are several existing Commission opinions that fully consider the application of these laws to an official who wishes to seek grants, loans, or contracts from an agency with which he or she is connected. See, e.g., Adv. Ops. No. 84-011, 95-007, and 2001-02.

Conclusion

This advisory opinion is based on the facts described in the opinion. 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.

Therefore, it is the opinion of the Ohio Ethics Commission, and the Commission advises all public officials and employees: First, Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a public official from soliciting, or using his or her public position to secure, anything of value that is of such a character as to manifest a substantial and improper influence on the official with respect to the performance of his or her duties. Second, R.C. 102.03(D) and (E) do not prohibit a public official from seeking or accepting a benefit or pursuing a remedy offered by the public agency he or she serves, provided that the official meets the qualifications for the benefit or remedy and that it is available to any citizen in the community who meets the qualifications, as further described in the opinion. Finally, R.C. 102.03(D) and (E) prohibit a public official from soliciting or accepting any benefits that are greater than those offered by the

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public agency he or she serves to other citizens in the community, and from using his or her position to secure more favorable treatment from officials or employees in the agency, as further described in the opinion.

By my signature below, I certify that Advisory Opinion No. 2009-04 was rendered by the Ohio Ethics Commission at its meeting on September 23, 2009.

A handwritten signature in black ink, appearing to read "Ben Rose", written over a horizontal line.

Ben Rose, Chair
Ohio Ethics Commission