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INFORMATION SHEET: OPINION NO. 2011-08
VENDOR DISCOUNTS

What is the question in the opinion?

A governmental agency has entered into a contract with a vendor of computer software products. The vendor routinely offers the employees of its customers a discount if the employees purchase the vendor's products for their personal use. The agency has asked whether the officials or employees of the agency can accept the discount.

What is the answer in the opinion?

An official or employee of a governmental agency, who is not in a position to negotiate or authorize the agency's contract with the vendor, can accept a discount on goods from an agency vendor provided that the vendor: (a) offers the same discount to all of its customers; (b) offers the same discount to all eligible officials or employees of the agency; and (c) does not offer discounts in exchange for the performance of any officials' or employees' official duties.

To whom do these restrictions apply?

The restrictions in the Ethics Law that are discussed in the opinion apply to all public officials and employees.

What prompted this opinion?

The opinion was prompted by a request for advice.

When will the conclusions in this opinion become effective?

The opinion will become effective after it is approved by the Commission.

For More Information, Please Contact:

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ADVISORY OPINION NO. 2011-08 IS ATTACHED.**

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Advisory Opinion
Number 2011-08
November 3, 2011
VENDOR DISCOUNTS

Syllabus by the Commission:

An official or employee of a state department who is not in a position to negotiate or authorize the department's contract with the vendor can accept a discount on goods from a department vendor provided that the vendor: (a) offers the same discount to all of its customers; (b) offers the same discount to all eligible officials or employees of the department; and (c) does not offer discounts in exchange for the performance of any officials' or employees' official duties.

* * *

A state department has entered into a contract with a vendor of computer software products. The vendor routinely offers the employees of its customers a discount if the employees purchase the vendor's products for the employees' personal use. The department has asked whether its officials or employees can accept the discount.

Question and Brief Answer

Question: Is this discount permissible?

Answer: Within the requirements discussed in this opinion, the discount is permissible for department employees and officials who do not have the authority to negotiate or authorize the contract with the vendor.

Supplemental Compensation—R.C. 2921.43(A)

A state department official or employee is a public servant¹ subject to R.C. 2921.43(A)(1), which provides that no public servant shall knowingly solicit or accept:

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.

Compensation is anything of value given to a public servant for services, whether in the form of cash, tangible goods, or other financial gain or benefit.² A discount that is specifically given to a public servant in exchange for the performance of his or her duties is compensation that is prohibited by R.C. 2921.43(A).³ For example, if a discount is offered exclusively to a selective or limited group of public employees, the discount may be compensatory in nature.⁴

In this situation, the vendor routinely offers this kind of discount to the employees of its public and private customers. The discount is not directed at any selective or limited class of public employees. The employees do not exchange any obligation with the vendor in return for the discount. Provided that the vendor does not offer the discounts to any public officials and employees in exchange for the performance of their public duties, R.C. 2921.43(A) does not prohibit the officials or employees from accepting the discounts.

Accepting Anything of Value—R.C. 102.03(E)

All state department officials and employees⁵ are subject to R.C. 102.03(E), which reads:

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 discounts on consumer goods and services.⁶

R.C. 102.03(E) prohibits a public official or employee from soliciting or accepting a thing of value if the thing of value is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to the official's or employee's duties because: (1) it is of a substantial nature or value; and (2) it is from a source that is doing or seeking to do business with, regulated by, or interested in matters before the agency the official or employee serves.⁷ A thing of value manifests a substantial influence on a public official or employee if it could impair the official's or employee's objectivity and independence of judgment in matters affecting the source of the thing of value.⁸

Discounts from Vendors

The Commission has previously considered whether public officials and employees can accept discounts provided by merchants in their communities. In Advisory Opinion No. 92-015, the Commission explained that city police officers were prohibited from accepting a discount offered by a retailer in the city because the discounts were: (1) of a substantial value; and (2) offered only to a selective or limited class of city employees in recognition of their public duties.

In Advisory Opinion No. 2001-08, the Commission concluded that R.C. 102.03(F) does not prohibit a vendor from promising or giving a uniform discount on its goods or services to a large class of public employees, even though some members of the class serve public agencies

that do business with the vendor. The law does prohibit a vendor from promising or offering public employees a discount on its goods or services if:

- (1) The vendor limits the discount offer to employees who have official duties and responsibilities that affect the vendor's financial interests; or
- (2) The vendor offers greater discounts to employees with duties and responsibilities that affect the vendor's financial interests than it offers to other employees.⁹

While Advisory Opinion No. 2001-08 addresses R.C. 102.03(F), which applies to the source of the discount, its conclusions extend to R.C. 102.03(E), which applies to the public official or employee who is offered the discount.

Application to Your Question

The Ethics Law does not prohibit the officials or employees of a state department from accepting discounts offered by a vendor provided that the vendor:

- (1) Extends the same discount to all of its customers and does not limit it to officials and employees of the department;
- (2) Offers a uniform discount to all eligible department officials and employees, without limiting the offer to employees with official duties or responsibilities affecting the vendor's financial interests; and
- (3) Does not offer the discount to department officials and employees in exchange for the performance of their public duties.

Agency Personnel Who Negotiate or Authorize the Vendor Contract

The primary concern of all public employees when making decisions regarding public contracts should be obtaining goods and services at the lowest available cost for their public agency, rather than securing any personal benefit. A public official or employee who has the authority to negotiate or authorize the agency's contracts may be improperly influenced to select a particular vendor in order to secure a discount for his or her own personal use, which could result in a greater expense for the agency.

Therefore, any department official or employee who negotiates or authorizes a vendor's contract is prohibited from accepting any discount offered by the vendor for his or her own personal use. Further, department personnel should not suggest that the vendor offer an employee discount as part of the public contract.

Application of Opinion

Although this opinion specifically involves the officials and employees of a state department, the conclusions in the opinion apply to any individual who is elected or appointed to, or employed by, any public agency, whether the individual is: (1) compensated or

uncompensated; (2) serving full time or part time; or (3) serving in a temporary or permanent position. Public agencies include but are not limited to state departments, state boards, commissions, and authorities, counties, cities, villages, townships, school districts, public libraries, and regional authorities.

Conclusion

This advisory opinion 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 that: An official or employee of a state department who is not in a position to negotiate or authorize the department's contract with the vendor can accept a discount on goods from a department vendor provided that the vendor: (a) offers the same discount to all of its customers; (b) offers the same discount to all eligible officials or employees of the department; and (c) does not offer discounts in exchange for the performance of any officials' or employees' official duties.

By my signature below, I certify that Advisory Opinion No. 2011-08 was rendered by the Ohio Ethics Commission at its meeting on November 3, 2011.



Ben Rose, Chair
Ohio Ethics Commission

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

¹ R.C. 2921.01(A).

² Ohio Ethics Commission Advisory Opinion No. 2008-01.

³ Adv. Op. No. 92-015.

⁴ Id.

⁵ R.C. 102.01(B) and (C).

⁶ R.C. 1.03; 102.01(G); Adv. Ops. No. 92-015 and 2001-08.

⁷ Adv. Ops. No. 2001-03 and 2004-03.

⁸ Adv. Ops. No. 91-010 and 95-001.

⁹ Adv. Op. No. 2001-08.