

OHIO ETHICS COMMISSION

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Advisory Opinion Number 2001-04
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Syllabus by the Commission:

(1) Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a school district official or employee from soliciting, accepting, or using his or her position to secure travel, meals, and lodging, or a gift of substantial value, from a party that is interested in matters before, regulated by, or doing or seeking to do business with the school district;

(2) The prohibition in R.C. 102.03(D) and (E) applies to every school district and educational service center elected and appointed official, and to every employee of a school district or educational service center except a teacher, instructor, or other kind of educator whose position does not involve the performance of, or authority to perform, administrative or supervisory functions;

(3) Division (F) of Section 102.03 of the Revised Code prohibits any person from promising or giving, to a school district official or employee, travel, meals, and lodging, or a gift of substantial value, if the person is interested in matters before, regulated by, or doing or seeking to do business with the public official's or employee's public agency;

(4) Division (A) of Section 2921.43 of the Revised Code prohibits all elected and appointed school district officials and all school district employees, including all teachers, from accepting any gift, regardless of its value, and prohibits any person from giving a gift to a school official or employee, if either the purpose or the result of the gift is to provide payment to the public servant in return for the performance of his or her official duties.

* * * * *

You have asked whether the Ohio Ethics Laws and related statutes prohibit school district officials or employees from accepting travel, meals, and lodging, or gifts, provided to them in connection with their public employment. You have explained that school district officials and employees, including administrators, teachers, and coaches, are sometimes offered gifts by students, parents, and vendors of the district.

You have identified two situations as examples. First, you have explained that a company wishes to provide construction services to the school district. The company would like to take

two school district administrators to see an example of its work in another state. The company has offered to provide air travel, meals, and lodging for the administrators. Second, a vendor wishes to sell class rings, necklaces, and other jewelry to students in the district's high schools. The jewelry ranges in cost from \$100.00 to \$500.00 an item, depending on the item selected and the metal and stone used. You have stated that the vendor has offered to provide free items of jewelry to some of the school administrators and teachers as an expression of good will.

Brief Answer

As explained more fully below, the Ohio Ethics Law prohibits every school district official or employee, except a teacher, instructor, and other educator whose position does not involve the performance of, or authority to perform, administrative or supervisory functions, from soliciting, accepting, or using his or her position to secure travel, meals, and lodging, or a gift of substantial value, from any party that is interested in matters before, regulated by, or doing or seeking do business with the school district he or she serves. Examples of teachers who perform, or have the authority to perform, administrative or supervisory functions include academic department heads, athletic directors, and coaches. The Ethics Law does not prohibit school district officials and employees from accepting a promotional item, such as a pen, pencil, or calendar, or a gift of nominal or de minimis value.

All school officials and employees, including teachers regardless of their job duties, are prohibited from accepting any gift, if either the purpose or the result of the gift is to provide payment to the public servant in return for the performance of his or her official duties. All persons are prohibited from providing, to a school employee, gifts that are provided to the official or employee as compensation in return for the performance of his or her official duties. The Ethics Law and related statutes also prohibit all persons, including students, parents, and school district vendors, from promising or giving, to any school district official or employee, any gift that is provided to the official or employee as compensation for the performance of his or her official duties.

Accepting Anything of Value

Your attention is directed 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.

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 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 that phrase is defined in R.C. 102.01(B). See Ohio Ethics Commission Advisory Opinions No. 93-017 and 2000-04. Therefore, a school district administrator is a public official for purposes of R.C. 102.03(D) and (E).

Further, 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 employees, 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. Examples of teachers whose duties include administrative or supervisory activity include an educator who is the head of an academic department, and who establishes the curriculum, teaching activities, or other matters for the department, or an instructor who acts as an athletic coach or band director, and supervises the activities of assistants. Adv. Op. No. 2000-04. 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, to include money, goods and chattels, and every other thing of value. R.C. 1.03; 102.01(G). The Ethics Commission has held that promotional items, gifts, gratuities, and discounts, of the kind you have described, constitute things of value for purposes of R.C. 102.03. Adv. Ops. No. 82-005, 91-010, 92-015, and 95-001. Samples of items sold by a vendor, such as class rings, necklaces, and other jewelry, would also fall within the definition of anything of value.

Substantial and Improper Influence

The issue before the Commission is whether any one of these kinds of items, offered to a school official or employee, are of such a character as to manifest a "substantial" and "improper" influence upon that official or employee with respect to his or her duties. In Advisory Opinion No. 86-011, the Commission held that, when determining whether anything of value could have an improper influence upon a public official or employee with respect to the performance of his duties, the focus is primarily on the source of the thing of value. Id. The Commission held that the question of whether the gift could have a "substantial" influence depends on the nature of the thing of value. Id. Therefore, in the instant situation, the Commission must examine both the source and the nature of a gift offered to a public official or employee.

Source of Anything of Value

With regard to the source of the thing of value, the Commission has consistently held that anything of value could have an improper influence on a public official or employee if it is provided to the official or employee by a party that is interested in matters before, regulated by, or doing or seeking to do business with the public official's or employee's agency. See Adv. Ops. No. 84-010, 89-013, 90-001, and 95-001. The Commission explained in Advisory Opinion No. 84-010 that:

The receipt of something of value from a party that is interested in matters before, regulated by, or doing or seeking to do business with the agency with which the public official or employee serves is of such character as to manifest a substantial or improper influence upon the public official or employee with respect to his official duties, because it could impair his independence of judgment in the performance of his duties and affect subsequent decisions in matters involving the donor of the thing of value.

The Commission has consistently held that a public official or employee is prohibited from accepting a thing of value from any of these improper sources. See Adv. Ops. No. 86-011, 89-002, and 89-013. For example, in Advisory Opinion No. 2000-04, the Ethics Commission concluded that a school district official or employee is prohibited from receiving any benefit from a school trip company that does business with his school district.

In the instant situation, the gifts are being offered to school district officials and employees by students, parents, and vendors who are doing business with or wish to do business with the district. Students are subject to the decisions made by school district officials and employees, and are, therefore, in the category of regulated parties. Parents whose children attend classes in the school district are interested in matters pending before the school district. Vendors who sell or wish to sell goods or services to the school district are either parties that are doing or seeking to do business with the district. A vendor who wishes to sell items to students or parents, but needs the permission of the district before it can engage in the commercial activity, such as the vendor of class rings, necklaces, and other jewelry in your example, are parties that are interested in matters pending before the district. Therefore, the gifts that you have described in your question, offered by students, parents, and vendors seeking to do business with the district or with students and parents of students in the district, are being offered to the school officials and employees by improper sources.

Thus, the question becomes whether the offered items are "substantial," and thus prohibited things of value under R.C. 102.03. As discussed above, to determine whether a thing of value is "substantial," the Commission examines the nature of the thing of value.

Nature of Anything of Value

The Commission has held that anything of value could have a "substantial" influence upon a public official or employee, with respect to the performance of his duties, for purposes of R.C. 102.03(D) and (E), if the thing of value is of a "substantial" nature. Adv. Op. No. 86-011. The term "substantial" is not statutorily defined for purposes of the Ohio Ethics Law. In the absence of a statutory definition or a technical meaning, words and phrases used in a statute must be construed according to common usage. See R.C. 1.42. In Advisory Opinions No. 75-014 and 76-005, the Commission applied the common usage standard of R.C. 1.42 to the word "substantial" as used in R.C. 102.03 and determined that "substantial" was commonly used to mean "of or having substance, real, actual, true; not imaginary; of considerable worth or value; important."

The Commission has generally found that some items are nominal or de minimis in value and will not have a substantial influence on a public official or employee. See, e.g., Adv. Ops.

No. 86-003, 89-014, and 92-015. The Commission has found that a public official or employee is not prohibited from accepting a thing of value of a nominal or de minimis value from an improper source. For example, the Commission has stated that a public official or employee is not prohibited from soliciting or accepting a tee-shirt or other kind of nominal promotional item provided by a vendor or potential vendor. However, the Commission has cautioned that de minimis or nominal items or expenses could have a substantial cumulative value if extended over time. Adv. Op. No. 86-003. Further, the Commission has concluded that a public official's or employee's acceptance of even nominal things of value from certain parties could create the appearance of impropriety. Id.

The Commission has also identified some items that are clearly of a substantial value. In Advisory Opinion No. 2001-03, the Commission concluded that most golf outings are of a substantial nature. In Advisory Opinion No. 95-001, the Commission concluded that a season ticket for the games of a professional sports team is a substantial thing of value. Other items that the Commission has determined are substantial things of value are travel, meals, and lodging, discounts on furniture and major appliances, frequent flyer benefits accrued in connection with public travel, and a month of free parking or free gasoline, or a monthly public transit pass for commuters. Adv. Ops. No. 89-014, 91-010, 92-014, and 92-015.

The Commission has held that the application of R.C. 102.03 is dependent on the facts and circumstances of each individual situation. Adv. Ops. No. 87-008 and 89-003. The question, then, is whether the items you have described are of a substantial nature.

Travel, Meals, and Lodging

The first situation you have identified involves a company that wishes to provide construction services to the school district. The company would like to take two school district administrators to see an example of its work in another state. The company has offered to provide air travel, meals, and lodging for the administrators.

In past advisory opinions, the Commission has concluded that travel, meals, and lodging provided to public officials and employees are of a substantial value. Adv. Ops. No. 89-013, 89-014, and 2000-04. Based on this precedent, it is clear that the air travel, meals, and lodging offered by the construction vendor are items of substantial value. The fact that the travel is provided to the school officials in order to allow them to view examples of the vendor's work does not change its character as an item of substantial value.

Samples of Vendor Merchandise

The second example about which you ask involves samples of merchandise offered for sale by vendors, either to the school or to students and parents at the school. Specifically, you have stated that a vendor wishes to sell class rings, necklaces, and other jewelry to students in the district's high schools. In order for the vendor to sell these items to students, administrators for the district and at each school must enter into a contract with the vendor. The contract will set forth such items as the kinds and costs of class rings, necklaces, and other jewelry the vendor

will sell, the methods and times at which the vendor may contact students, and permission for the vendor to use the school team name and mascot on the jewelry.

You have explained that the jewelry commonly ranges in cost from \$100.00 to \$500.00 an item, depending on the item selected and the metal and stone used. You have stated that the vendor has offered to provide free items of jewelry to some of the school administrators and teachers as an expression of good will.

As stated above, the Commission has identified such items as discounts, a golf outing, a parking or transit pass for one month, and season tickets to the games of a professional sports team as items of substantial value. Adv. Ops. No. 92-014, 92-015, 95-001, and 2001-03. Based on this precedent, it is clear that a class ring, necklace, or other jewelry item of this type, with a cost ranging from \$100.00 to \$500.00, is an item of substantial value. The fact that these items are provided to school administrators in the interest of promoting "good will" for the vendor does not change their character as items of substantial value.

Application of Prohibition

Therefore, Divisions (D) and (E) of Section 102.03 would prohibit a school official or employee from accepting, soliciting, or using the authority or influence of his public position to secure travel, meals, and lodging, or a gift of a substantial value, such as an item of jewelry, from a party that is interested in matters before, regulated by, or doing or seeking to do business with, the school district. Prohibited sources would include students, parents, and parties doing or seeking to do business with the district. As stated above, this prohibition applies to all elected and appointed school district officials, and to all school district employees, except teachers and other instructors who do not perform or have the authority to perform administrative or supervisory functions.

R.C. 102.03(D) and (E) do not prohibit a school district official or employee from accepting an offered promotional item, such as a pen, pencil, or calendar. Further, the Ethics Law and related statutes would not prohibit a school district official and employee from accepting a gift of nominal or de minimis value, such as a book or other typical gift a student might give his or her teacher at the holidays.

You should also note that R.C. 102.03(D) and (E) would not prohibit the school district from accepting the donation of sample merchandise, from the vendor, for the use of the district. For example, if the district were considering the purchase of computers for use in a high school computer lab, the district could accept the loan of a computer from any of the companies vying for the contract, in order for the district to determine which computer met the needs of the district in the most cost-effective fashion. See Adv. Op. No. 89-002. However, it must be clear that the computer is being used only for school district business, and is not provided to any school district official or employee for his or her personal use or benefit. Id.

Travel, meals, and lodging from construction vendors seeking business from the school district accrue to the personal benefit of the public official and employee who is undertaking the travel, even though they may also accomplish a business purpose. Adv. Op. No. 89-013 and 89-

014. But see Adv. Op. No. 2000-04 (school district officials and employees are not prohibited 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). Gifts of class rings, necklaces, and other jewelry, as described above, are clearly for the personal use of the recipient, and do not serve any school district purpose.

Giving Anything of Value—R.C. 102.03(F)

You should also note R.C. 102.03(F), which provides:

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.

The restriction in R.C. 102.03(F) applies to any party who is promising or giving a gift to a school district official and employee.

As explained above, a public official's or employee's acceptance of a gift of substantial value, from a party that is interested in matters before, regulated by, or doing or seeking to do business with the public official's or employee's public agency, could be of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to his or her duties. Therefore, R.C. 102.03(F) prohibits any party that is interested in matters before, regulated by, or doing or seeking to do business with the public official's or employee's public agency from providing travel, meals, and lodging, or a gift of substantial value, to a public official or employee.

Supplemental Compensation—R.C. 2921.43(A)

The question presented in this opinion may also raise issues involving supplemental compensation, and thus implicate the prohibitions of Section 2921.43(A), which provide:

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

(1) 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 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;

(2) Additional or greater fees or costs than are allowed by law to perform his official duties.

The term "public servant" is defined, for purposes of this section, to include any public official; any person performing ad hoc a governmental function, including, but not limited to, a

juror, member of a temporary commission, master, arbitrator, advisor, or consultant; and a person who is a candidate for public office, whether or not the person is elected or appointed to the office for which the person is a candidate. R.C. 2921.01(A). A public school administrator, official, or employee, including any teacher, regardless of his or her duties and responsibilities, 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 Adv. Op. 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. See Adv. Op. No. 90-001. R.C. 2921.43(A)(1) also prohibits any person from promising or giving to a public servant any such outside compensation. Adv. Ops. No. 89-014 and 90-001. The exceptions set forth in R.C. 102.03(G) through (I) concern campaign contributions, and under certain circumstances, honoraria and travel, meal, and lodging expenses incurred in connection with a personal appearance or speech, or attendance at conferences, seminars, and similar events, and are not applicable in the instant situation.

The word "compensation" is not defined for purposes of R.C. 2921.43. In Advisory Opinion No. 92-014, the Ethics Commission held:

A primary rule of statutory construction is that words used in a statute must be construed according to rules of grammar and common usage. See R.C. 1.42. Furthermore, statutes "must be construed in the light of the mischief they are designed to combat." City of Mentor v. Giordano, 9 Ohio St. 2d 140, 144 (1967). "Compensation" is defined as "payment for services: esp., wages or remuneration." See Webster's New World Dictionary 289 (2nd College Ed. 1972).

See also State v. Livesay, 91 Ohio Misc. 2d 208 (C.P. Jackson Cty. February 19, 1998) (the use of the word "compensation" in R.C. 2921.43(A) requires an exchange of a thing in return for some obligation).

R.C. 2921.43(A) prohibits a public servant from accepting any item, and any person from promising or giving a public servant any item, including a gift of substantial value, that is intended to be provided in exchange for the performance of the public servant's public duties. For example, a substantial gift such as a class ring or other jewelry that a vendor provides to any school district official or employee in return for the performance of a particular duty, act, or service that the school district official or employee is required to perform, or for the general performance of the duties of the school district official or employee, is consideration in the form of jewelry given to a school official or employee for performing his or her public duties. Adv. Op. No. 2001-03. See also State v. Capko, No. 56814, 1990 Ohio App. LEXIS 1287, at *5 (Cuyahoga County 1990) (quoting State v. Beros, No. CA-633 (Guernsey County 1981) (the bribery statute [R.C. 2921.02(B)] prohibits a public servant from receiving money to perform his job duties 'wrong,' while R.C. 2921.43(A) prohibits a public servant from receiving money to perform his job duties 'right').

Other Considerations

Your question may also raise issues concerning school district rules or policies that govern the officials and employees of those districts, and that are independent of the Ohio Ethics Law and related statutes. A public agency cannot, by rule or policy, impose a lesser standard of behavior on public officials and employees than that imposed by the Ohio Ethics Law. See Adv. Op. No. 83-004 (the Ohio Ethics Law and related statutes are general laws establishing a standard of conduct for all citizens who serve as public officials or employees, and will prevail over city charter provisions). However, a public agency may be able to adopt rules and policies that impose a broader prohibition than those contained within the Ohio Ethics Law. These rules and policies are not within the Ethics Commission's jurisdiction. Therefore, each school district official or employee may wish to seek advice from the specific school district he or she serves regarding the existence of any rule or policy that governs the issues presented in this opinion.

Conclusion

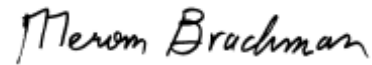
As explained more fully above, the Ohio Ethics Law prohibits every school district official or employee, except a teacher, instructor, and other educator whose position does not involve the performance of, or authority to perform, administrative or supervisory functions, from soliciting, accepting, or using his or her position to secure travel, meals, and lodging, or a gift of substantial value, from any party that is interested in matters before, regulated by, or doing or seeking to do business with the school district he or she serves. Examples of teachers who perform, or have the authority to perform, administrative or supervisory functions include academic department heads, athletic directors, and coaches. The Ethics Law does not prohibit school district officials and employees from accepting a promotional item, such as a pen, pencil, or calendar, or a gift of nominal or de minimis value.

All school officials and employees, including teachers regardless of their job duties, are prohibited from accepting any gift, if either the purpose or the result of the gift is to provide payment to the public servant in return for the performance of his or her official duties. All persons are prohibited from providing, to a school employee, gifts that are provided to the official or employee as compensation in return for the performance of his or her official duties. The Ethics Law and related statutes also prohibit all persons, including students, parents, and school district vendors, from promising or giving, to any school district official or employee, any gift that is provided to the official or employee as compensation for the performance of his or her official duties.

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) Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a school district official or employee from soliciting, accepting, or using his or her position to secure travel, meals, and lodging, or a gift of substantial value, from a party that is interested in matters before, regulated by, or doing or seeking to do business with the school district; (2) The prohibition in R.C. 102.03(D) and (E) applies to every school district and educational service center elected and appointed official, and to every employee of a school district or educational service center except

a teacher, instructor, or other kind of educator whose position does not involve the performance of, or authority to perform, administrative or supervisory functions; (3) Division (F) of Section 102.03 of the Revised Code prohibits any person from promising or giving, to a school district official or employee, travel, meals, and lodging, or a gift of substantial value, if the person is interested in matters before, regulated by, or doing or seeking to do business with the public official's or employee's public agency; and (4) Division (A) of Section 2921.43 of the Revised Code prohibits all elected and appointed school district officials and all school district employees, including all teachers, from accepting any gift, regardless of its value, and prohibits any person from giving a gift to a school official or employee, if either the purpose or the result of the gift is to provide payment to the public servant in return for the performance of his or her official duties.



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