

OHIO ETHICS COMMISSION

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Advisory Opinion Number 2002-02
June 13, 2002

Syllabus by the Commission:

- (1) A person is not prohibited, within the parameters discussed in this opinion, from providing the cost of a meal, reception, or open house at an educational or informational conference held by an association of public officials and employees;
- (2) A person that is providing a meal, reception, or open house at a conference of an association of public officials and employees must ensure that the meal, reception, or open house is: (a) of an ordinary, routine character; (b) at an educational or informational event; (c) open to all of the public officials and employees attending the event; and (d) within the parameters discussed in this opinion;
- (3) A public official or employee who attends a conference held by an association of public officials and employees is not prohibited, within the parameters discussed in this opinion, from accepting a meal, or attending a reception or open house, the cost of which is financed by a private party;
- (4) A public official or employee is prohibited from improperly using his position to secure the donation of the cost of a meal, reception, or open house at a conference of an association of public officials and employees to which he or his public agency belongs, while the official or employee is simultaneously engaged in governmental business or regulatory activity directly affecting the related interests of the person solicited.

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You have asked whether the Ohio Ethics Law and related statutes prohibit public officials and employees from attending a reception or open house, the cost of which is paid for by a professional service provider during an annual state educational conference of an organization of public officials and employees. You have also asked whether the service provider can help sponsor the Conference, or provide the cost of a meal that is open to individuals who have paid the registration fees to attend the conference. While your question specifically involves a law firm, the Commission assumes that persons that provide services to public agencies could be individuals, partnerships, or for-profit or non-profit corporations. The conclusions in this opinion apply equally to all persons.

The questions before the Commission are:

(1) Does the Ethics Law prohibit a person from providing the cost of a meal, reception, or open house at a conference of an association of public officials and employees?

(2) Does the Ethics Law prohibit public officials and employees from attending a meal, reception, or open house, where the cost is provided by a sponsor, at a conference of an association of public officials and employees?

Brief Answer

As explained more fully below, R.C. 102.03(F) does not prohibit a person from underwriting the cost of a meal, reception, or open house, at a conference of an association of public officials and employees, so long as the event is of an ordinary, routine character and all of the public officials and employees who attend the conference are invited, within the parameters discussed in this opinion. R.C. 102.03(D) and (E) do not prohibit a public official or employee from attending a meal, reception, or open house, at a conference of an association of public officials and employees, sponsored by a person, so long as the event is of an ordinary, routine character, and all of the public officials and employees who attend the conference are invited to attend the meal, reception, or open house, within the parameters discussed in this opinion.

Conflict of Interest Laws-R.C. 102.03(D), (E), and (F)

The conflict of interest restrictions set forth in R.C. 102.03(D), (E), and (F) 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.

(F) 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.

R.C. 102.03(D) and (E) prohibit public officials and employees from soliciting, accepting, or using their public positions to secure anything of value in certain situations. R.C. 102.03(F) prohibits any person from promising or giving anything of value to a public official or employee in certain situations.

All officials and employees, except some educators, of public agencies at all levels of government in the state are within the definition of "public official or employee," as used in R.C. 102.03(D), (E), and (F), and are subject to the restrictions set forth in R.C. 102.03(D) and (E). See Ohio Ethics Commission Advisory Opinions No. 93-017, 2000-04, and 2001-04. The prohibition in R.C. 102.03(F) applies to any "person." The term "person," as used in R.C.

102.03(F), is defined to include any individual, corporation, partnership, association, or other similar entity. See R.C. 1.59.

Acceptance, Solicitation, Promise, or Offer of Things of Value Generally

Conflict of interest protections contained in R.C. 102.03(D) and (E) prohibit a public official or employee from soliciting or accepting a thing of value that could have a substantial and improper influence upon the public official or employee with respect to his or her duties. *State v. Lordi*, 140 Ohio App.3d 561, 569 (2000), discretionary appeal not allowed, 91 Ohio St.3d 1523, 91 Ohio St.3d 1526, 91 Ohio St.3d 1536, motion for reconsideration denied, 92 Ohio St.3d 1422 (2001). *Adams v. Northeastern Local Sch. Dist. Bd. of Edn.*, Clark App. No. 98 CA 46, unreported, 1998 Ohio App. LEXIS 5727 (December 4, 1998) (A public official who accepts a thing of value may violate the provisions of R.C. 102.03(E) regardless of whether the thing of value actually influenced that official in some particular manner.).

R.C. 102.03(F), in turn, prohibits any person from promising or giving a public official or employee a thing of value that would have a substantial and improper influence upon the public official or employee with respect to his or her duties. In questions involving anything of value, both the source and the nature of the thing of value must be examined for purposes of the application of R.C. 102.03(D), (E), and (F). Adv. Ops. No. 86-011, 90-001, and 95-001. See also Sup. Ct., Bd of Comm'rs Griev. and Disc. Op. 98-10 (1998).

With regard to the source of the thing of value, R.C. 102.03(D), (E), and (F) prohibit anything of value that 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, and 95-001. If a thing of value is offered by one of these improper sources, the question, for purposes of determining whether a public official or employee is prohibited from accepting the thing of value, becomes whether the offered item is "substantial" in nature.

The Commission has 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. For example, the Commission has stated that a meal of a routine character provided to a public official or employee, and not provided in return for the performance of public duties, will not have a substantial influence on the official or employee. Adv. Op. No. 2001-03. The Commission has also 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. Adv. Op. No. 2001-04. However, the Commission has cautioned that, in certain facts and circumstances, de minimis or nominal items or expenses could have a substantial cumulative value if extended over time. See Adv. Op. No. 86-003.

On the other hand, some items are clearly of a substantial value. For instance, the Commission has concluded that golf outings at an exclusive venue, a season of tickets for the games of a professional sports team, and the combination of travel, meals, and lodging, are substantial things of value. See Adv. Ops. No. 89-014 (travel, meals, and lodging), 95-001 (season tickets), and 2001-03 (golf outings). The Commission has also concluded that expensive

jewelry and discounts on furniture and major appliances are substantial things of value. See Adv. Ops. No. 92-015, 2001-04, and 2001-08.

Meal, Reception, or Open House Sponsored by a Person

The specific questions before the Commission are whether the Ethics Law prohibits a person from sponsoring a meal, reception, or open house, to which the public officials and employees at an educational conference of an association of public officials and employees are invited and whether the Ethics Law prohibits a public official or employee from attending such an event.

As stated above, the Ohio Revised Code defines "person" to include any individual, corporation, partnership, association, or other similar entity. See R.C. 1.59. Therefore, any "person," whether an individual or a for-profit or non-profit corporation, that intends to pay these types of expenses, is often either already doing business with, or attempting to secure business from, the public agencies represented at the conference. Because the source of the thing of value is a party that is doing or seeking to do business with public agencies represented at the conference, the question becomes whether the thing of value provided is "substantial." Food and beverages consumed by an individual public official or employee at a meal, reception, or open house in connection with a conference generally would not be substantial things of value unless the food and beverages are unusually lavish in nature. Adv. Op. No. 2001-03. See also *State v. Hartung*, No. 99-10-2260(B), unreported (C.P. Summit 2000) and *State v. Peters*, No. 99-10-2260(C), unreported (C.P. Summit 2000).

Although no public official or employee will individually receive anything of substantial value, it is clear that the entire meal, reception, or open house, paid for by a person, would be of a substantial cost to that person. R.C. 102.03(F) prohibits a person from promising or giving a public official or employee anything of value that could have a substantial and improper influence on the official with respect to the performance of his duties. However, a meal, reception, or open house provided at a conference of public officials and employees, to all of the officials and employees attending the conference, under the conditions outlined in this opinion, and absent the person's intent to influence any specific officials or employees because of ongoing or potential matters involving the person providing the cost of the event, is not of such a character as to manifest an improper influence on the officials or employees who accept the meal.

If the meal, reception, or open house is of an ordinary, routine character, and is provided to all officials and employees at the conference, and not limited to those who work with agencies that do business with the sponsoring party or those from whom the sponsor is specifically soliciting business, the meal, reception, or open house would not have a substantial and improper influence upon the public officials and employees who accept it. Therefore, R.C. 102.03(F) of the Revised Code does not prohibit a person from providing the cost of a meal, reception, or open house of an ordinary, routine character at a conference of public officials and employees, even though the total cost of the event may be substantial for the person.

However, it must be clear that the meal, reception, or open house is open to all of the officials and employees attending the conference, regardless of whether the public agencies they serve have a business, regulatory, or other relationship with the sponsor. The Commission understands that there may be some events that are attended primarily by officials and employees who perform specific job functions, sponsored by persons who do business with those officials and employees. The Ethics Law and related statutes do not prohibit such events, so long as all such officials and employees are invited. However, the conference must be of a genuine educational or informational character.

R.C. 102.03(E) does not prohibit a public official or employee who attends a conference of an association of public officials and employees from accepting a meal, or attending a reception or open house, of a normal, routine character, where the cost of the event is underwritten by a private person or party, if the event is open to all of the public officials and employees attending the conference. R.C. 102.03(D) and (E) prohibit a public official or employee who attends a conference of an association from accepting an item of substantial character, such as a golf outing at a private golf course and a lavish meal, from a private party, even if the item is offered to all public officials and employees attending the conference.

The Commission would, however, caution both public officials and employees and persons who intend to pay the costs of these kinds of activities. R.C. 102.03(D) and (E) would prohibit a public official or employee from improperly using his position to secure, or improperly soliciting, from a person, the donation of a meal, reception, or open house at a conference of an association of public officials and employees to which he or his public agency belongs, while the official or employee is simultaneously engaged in governmental business or regulatory activity affecting the person. For example, because of the inherent potential for a conflict of interest, the financial officer for a public agency would be prohibited from asking a vendor with whom he is engaged in direct business dealings on behalf of his public agency, at the same time that the parties are directly interacting to conduct public business, to simultaneously sponsor an event at an association conference.

R.C. 102.03(F) would prohibit a person from providing the cost of an event for the individual entertainment of public officials in connection with a conference, such as paying for the cost of a golf outing at a private golf course and a lavish meal, where each individual who attends the event would be offered a thing of substantial value, even if all attendees at the conference are invited, and the person is doing or seeking to do business with, interested in matters before, or regulated by the public agencies they serve. Adv. Op. No. 2001-03. R.C. 102.03(F) would also prohibit any person from providing the cost of an event with the intention of directly influencing an individual public official or agency to obtain a specific decision or action.

Finally, with regard to this question, 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 meal or entertainment, that is intended to be provided in exchange for the performance of the official's or employee's public duties or in recognition of the performance of the official's or employee's public duties.

Conclusion

This advisory opinion is based on the facts presented. 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 you are so advised, that: (1) A person is not prohibited, within the parameters discussed in this opinion, from providing the cost of a meal, reception, or open house at an educational or informational conference held by an association of public officials and employees; (2) A person that is providing a meal, reception, or open house at a conference of an association of public officials and employees must ensure that the meal, reception, or open house is: (a) of an ordinary, routine character; (b) at an educational or informational event; (c) open to all of the public officials and employees attending the event; and (d) within the parameters discussed in this opinion; (3) A public official or employee who attends a conference held by an association of public officials and employees is not prohibited, within the parameters discussed in this opinion, from accepting a meal, or attending a reception or open house, the cost of which is financed by a private party; and (4) A public official or employee is prohibited from improperly using his position to secure the donation of the cost of a meal, reception, or open house at a conference of an association of public officials and employees to which he or his public agency belongs, while the official or employee is simultaneously engaged in governmental business or regulatory activity directly affecting the related interests of the person solicited.


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