

OHIO ETHICS COMMISSION

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INFORMATION SHEET: ADVISORY OPINION NO. 2003-03 **GIFTS AND MEALS PROVIDED TO COLLEGE EMPLOYEES**

What are the questions addressed in the opinion?

Does the Ethics Law prohibit a public college employee from: (1) accepting entertainment, gifts, meals, and other things of value from a private student loan lender; or (2) serving on a customer advisory board organized by a lender, and accepting travel, meals, and lodging to attend meetings of the board or entertainment provided at the meetings?

What are the answers in the opinion?

The Ethics Law prohibits a public college employee from accepting anything, including gifts, entertainment, and travel, from any person other than the college, to compensate her for the performance of her duties. The Ethics Law also prohibits a college employee from soliciting, accepting, or using her position to secure anything of substantial value, including entertainment, gifts, or meals, from a private student loan lender who has or is seeking a contract with the college.

The Ethics Law does not prohibit an official or employee of a public college or university from serving, without compensation, on a customer advisory board organized by a private student loan lender. However, the Ethics Law prohibits the employee from soliciting, accepting, or using her position to secure travel, meals, and lodging to attend meetings of the board or entertainment provided at the meetings.

To whom does this opinion apply?

This opinion applies to any official or employee of a public college or university.

When will the conclusions of the opinion become effective?

The opinion became effective upon acceptance by the Commission.

For More Information, Please Contact:

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IT IS NOT AN ETHICS COMMISSION ADVISORY OPINION.
ADVISORY OPINION NO. 2003-03 IS ATTACHED.**

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Advisory Opinion
Number 2003-03
December 17, 2003

Syllabus by the Commission:

- (1) Division (A) of Section 2921.43 of the Ohio Revised Code prohibits any official or employee of a public college or university from soliciting or accepting from any person other than her public employer, and prohibits any person from promising or giving the official or employee, anything of value, including a gift, if the thing is promised or given to the official or employee to compensate her for the performance of her duties;
- (2) Divisions (D) and (E) of Section 102.03 of the Ohio Revised Code prohibits any official or employee of a public college or university, except educators whose have no administrative or supervisory authority, from soliciting, accepting, or using her position to secure entertainment, gifts, meals, and other things of substantial value from any person doing or seeking to do business with, interested in matters before, or regulated by the public college or university, including a private student loan lender who has or is seeking a contract with the college or university. The lender is bound by the concomitant provision set forth in Division (F) of Section 102.03 of the Ohio Revised Code, which prohibits promising or giving substantial things of value;
- (3) The Ohio Ethics Law does not prohibit an official or employee of a public college or university from serving, without compensation, on a customer advisory board organized by a private student loan lender; however, Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit the official or employee soliciting, accepting, or using her position to secure travel, meals, and lodging to attend meetings of the board.

* * *

You have asked whether the Ohio Ethics Law and related statutes prohibit an official or employee of a public college or university in Ohio from accepting entertainment, gifts, meals, and other things of value from a private student loan lender. You have also asked whether an official or employee of a public college or university in Ohio is prohibited from serving on a customer advisory board organized by a private student loan lender, and accepting travel, meals, and lodging to attend meetings of the board at resort hotels throughout the country.

Brief Answer

As explained more fully below, R.C. 2921.43(A) prohibits an official or employee of a public college or university from accepting anything, including gifts, entertainment, and travel, as compensation for the performance of her duties, from any person or entity other than the college or university she serves. R.C. 102.03(D) and (E) prohibit an official or employee of a public college or university from soliciting, accepting, or using her position to secure entertainment, gifts, meals, and other things of substantial value from any person doing or seeking to do business with, interested in matters before, or regulated by the public college or university, including a private student loan lender who has or is seeking a contract with the college or university. This restriction does not apply to college or university professors or other educators whose duties do not involve administrative or supervisory functions.

Finally, while the Ethics Law does not prohibit an official or employee of a public college or university from serving, without compensation, on a customer advisory board organized by a private student loan lender, R.C. 102.03(D) and (E) prohibit the official or employee soliciting, accepting, or using her position to secure travel, meals, and lodging to attend meetings of the board or entertainment provided at the meetings.

Facts

By way of history, you have explained that you are a student loan administrator at a public college in Ohio. The college uses the direct loan program, administered by the United States Department of Education (DOE), in order to provide tuition loans to students at the college.

You have stated that a private lender that provides student loans has approached the state college by which you are employed. The lender has been negotiating with the college to use the private lender for its student loans, through the Federal Family Education Loan Program, rather than have students borrow money directly from the DOE.

While employees of the lender have been discussing this matter with you and other college administrators, they have invited you to entertainment events at the annual conference of student loan administrators. Further, the lender's employees invited you to dinner and lunch on more than one occasion, and have offered you box seat or hospitality suite tickets for sporting events and concerts in the city where your college is located. You have asked whether you, and your colleagues, can attend the entertainment events or accept the meals and tickets.

You have also stated that the lender has asked you to serve on a Midwest advisory board composed of financial aid administrators at other colleges and universities in the Midwestern states. The lender has explained that the advisory board will act as a think tank, allowing the lender to better serve its customers—the schools and the students. As it was explained to you, your role will be to attend three four-day meetings a year, at various resort hotels around the

country, and provide feedback about the financial aid program at your college. The lender will underwrite all related travel costs, including airplane tickets, hotel expenses, and meals, for you and your spouse. You have asked whether you can serve on the lender's Midwest advisory board and accept the travel, meals, and lodging to attend three board meetings a year.

Accepting Meals or Tickets and Attending Entertainment Events

Your first question is whether you, and your colleagues, can attend the entertainment events or accept the meals and tickets.

At the outset, it should be noted that a public servant is prohibited from soliciting or accepting any item, regardless of its value, if the item is provided to compensate the official or employee for the performance of her duties. R.C. 2921.43(A); Adv. Op. No. 92-015. Therefore, a college or university employee is prohibited from attending an entertainment event, and from accepting a meal or ticket, if the item is provided in exchange for the performance of any of the employee's public duties or in recognition of the performance of her public duties.¹ If the items are not provided to the university employee to compensate the employee, the question is whether any other provision of the Ethics Law prohibits a public servant from accepting it.

The Commission has issued a number of opinions advising public officials and employees about the Ethics Law as it applies to the question of receiving entertainment, meals, tickets, and other things of value. See, e.g., Ohio Ethics Commission Advisory Opinions No. 95-001, 2001-03, and 2001-04. Those opinions consider 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.

The term "public official or employee" is defined for purposes of R.C. 102.03 to include any person who is elected or appointed to an office or is an employee of any public agency. R.C. 102.01(B). The term "public agency" is defined to include an "instrumentality" or "political subdivision" of the state, which would include a public college or university. R.C. 102.01(C); R.C. 3345.011(A) (a state university is a body politic and corporate); Hall v. Medical College of Ohio at Toledo (1984)

¹ Revised Code provisions outside the Ethics Law also prohibit public servants from soliciting or accepting items of value. R.C. 2921.02(B) and 3599.01. These provisions are not within the Commission's jurisdiction, and cannot be considered further.

(a state university is an instrumentality of the state); R.C. 3354.01(A) (a community college district is a political subdivision of the state); and 3358.01(A) (a state community college district is a political subdivision of the state). Therefore, officials and employees² of a public college or university are public officials and employees for purposes of the restrictions in R.C. 102.03. Adv. Op. No. 93-001.

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 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). See also Adv. Ops. No. 2001-03 and 2001-04.

With regard to the source of the thing of value, R.C. 102.03(D) and (E) 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.

A thing of value is of such a character as to manifest a substantial influence if the thing is of a substantial nature or value. Adv. Ops. No. 90-001, 92-014, and 92-015. See also Adv. Ops. No. 75-014 and 76-005 (the word "substantial" means "of or having substance, real, actual, true, not imaginary; of considerable worth or value; important.") By contrast, promotional items of nominal value are generally not considered to be "substantial" for purposes of R.C. 102.03(F). See, e.g., Adv. Op. No. 92-014 and 2001-04.³

By contrast, 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.

² Teachers, professors, and other educators whose positions do not involve the performance of, or authority to perform, administrative or supervisory function are not within the definition of "public official or employee," and, therefore, are not subject to the prohibitions set forth in R.C. 102.03.

³ 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.

R.C. 102.03(D) prohibits a public official or employee from using her position to secure anything of substantial value from a party that is doing or seeking to do business with, regulated by, or interested in matters before, the agency with which he serves. See Adv. Ops. No. 2001-03 and 2001-04. R.C. 102.03(E) prohibits a public official or employee from accepting or soliciting anything of value from a party that is doing or seeking to do business with, regulated by, or interested in matters before, the agency with which he serves. Id.

In the situation you have described, private lenders are seeking to enter into a contract with the college for the exclusive right to offer student loans at that public college and are, therefore, seeking to do business with and interested in matters before the college. If the college enters into a contract with the private lenders to provide loans to its students, the lender will be doing business with and interested in matters before the college.

You have stated that private lenders are offering entertainment, meals, and tickets. Where these items are of substantial value, such as meals at an upscale restaurant, tickets to post-season games of a sports team, golf outings with green fees, cart rental, and a meal at an exclusive course, you and your colleagues at the college are prohibited from accepting them from the lenders. However, the Ethics Law would not prohibit you from, for example, accepting a single lunch at a family-style restaurant, or promotional item, such as a tee-shirt or mouse pad.

The purpose of the restrictions in R.C. 102.03(D) and (E) is to protect the public by ensuring that the objectivity and independence of judgment exercised by a public official or employee is not impaired in any way because the official or employee has accepted an item of substantial value from a party that is doing or seeking to do business with, regulated by, or interested in matters before the public agency she serves. See Adv. Ops. No. 86-011 and 92-018. There is also a related prohibition that applies to the person who wishes to give a thing of value to an official or employee.

Prohibition on Providing Things of Value—R.C. 102.03(F)

You should also note R.C. 102.03(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.

This prohibition applies to any person, which is defined to include any individual, corporation, partnership, association, or other similar entity. R.C. 1.59. A private student loan lender is a "person" for purposes of R.C. 102.03(F). Therefore, while the restrictions discussed above apply to a public official or employee, and prohibit solicitation or mere acceptance of "anything of value," R.C. 102.03(F) imposes a parallel restriction on the private sector party that is providing things of value.

R.C. 102.03(F) prohibits a private student loan vendor from providing entertainment events, or giving meals or gifts, of a substantial value, to the officials and employees of a college with which it is doing or seeking to do business. R.C. 102.03(F) also prohibits the lender from promising, or offering, these items.

Accepting Travel, Meals, and Lodging for Serving on Midwest Advisory Board

Your final question is whether you can serve on the lender's Midwest advisory board and accept the travel, meals, and lodging to attend three board meetings a year. It appears, from the facts you have provided, as if the meetings will occupy only a minimal portion of the time you will spend at the meeting location, and that your expenses from days other than those on which official events occur will be provided by the lender. You have stated that you will receive no compensation, from the lender, for service on the advisory board.

Travel, meals, and lodging expenses are substantial things of value for purposes of R.C. 102.03(D) and (E). Adv. Ops. No. 89-014 and 2001-04. As noted above, a private student loan lender that is seeking an agreement with the college you serve is both seeking to do business with and interested in matters before the college. Therefore, you are prohibited from accepting travel, meal, and lodging expenses from the lender to attend meetings of the lender's Midwest advisory board. This conclusion applies regardless of whether the lender pays for the expenses directly or reimburses you for its expenditures. See City of Parma Heights v. Schroeder, 26 Ohio Op. 2d 119, 122 (C.P. Cuyahoga County 1963) (a public official cannot do indirectly what he cannot do directly). Further, as noted above, R.C. 102.03(F) prohibits the lender from providing travel, meals, and lodging to you and your colleagues employed at the college.

The college must determine whether it is in its best interest for you to serve on the Midwest advisory board, and attend the meetings. If the college determines that it is in its interest for you to serve on the board, the college must pay your necessary travel expenses to attend the business portion of the meetings. If the college does pay for your necessary travel expenses to attend the business meetings, you are prohibited from accepting tickets, meals, and entertainment of substantial value from the lender while you are at the resort hotel for the meeting. If your spouse travels with you, you are responsible for any additional expenses incurred for his travel, meals, lodging, and entertainment.

Application to College and University Officials and Employees

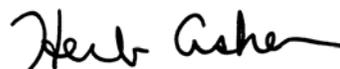
Your questions specifically involve college employees whose job duties involve student loans. While this opinion answers your specific questions regarding this group of employees, the restrictions discussed in the opinion would apply to other college and university employees. R.C. 2921.43, which prohibits a public servant from soliciting or accepting compensation except as provided by law, applies to all college and university officials and employees, regardless of their job duties. R.C. 102.03(D) and (E), the conflict of interest restrictions, apply to all college and university officials and employees except professors, and other educators whose positions do not involve the performance of, or authority to perform, administrative or supervisory function.

Conclusion

As explained more fully above, R.C. 2921.43(A) prohibits an official or employee of a public college or university from accepting anything, including gifts, entertainment, and travel, as compensation for the performance of her duties, from any person or entity other than the college she or university she serves. R.C. 102.03(D) and (E) prohibit an official or employee of a public college or university from soliciting, accepting, or using her position to secure entertainment, gifts, meals, and other things of substantial value from a private student loan lender who has or is seeking a contract with the college.

Finally, while the Ethics Law does not prohibit an official or employee of a public college or university from serving on a customer advisory board organized by a private student loan lender, R.C. 102.03(D) and (E) prohibit the official or employee soliciting, accepting, or using her position to secure travel, meals, and lodging to attend meetings of the board or entertainment provided at the meetings.

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 opinion of the Ohio Ethics Commission, and you are so advised, that: (1) Division (A) of Section 2921.43 of the Ohio Revised Code prohibits any official or employee of a public college or university from soliciting or accepting from any person other than her public employer, and prohibits any person from promising or giving the official or employee, anything of value, including a gift, if the thing is promised or given to the official or employee to compensate her for the performance of her duties; (2) Divisions (D) and (E) of Section 102.03 of the Ohio Revised Code prohibits any official or employee of a public college or university, except educators whose have no administrative or supervisory authority, from soliciting, accepting, or using her position to secure entertainment, gifts, meals, and other things of substantial value from any person doing or seeking to do business with, interested in matters before, or regulated by the public college or university, including a private student loan lender who has or is seeking a contract with the college or university. The lender is bound by the concomitant provision set forth in Division (F) of Section 102.03 of the Ohio Revised Code, which prohibits promising or giving substantial things of value; and (3) The Ohio Ethics Law does not prohibit an official or employee of a public college or university from serving, without compensation, on a customer advisory board organized by a private student loan lender; however, Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit the official or employee soliciting, accepting, or using her position to secure travel, meals, and lodging to attend meetings of the board.



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