



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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Advisory Opinion Number 89-014
December 14, 1989

Syllabus by the Commission:

(1) The Ohio Ethics Law and related statutes are general laws which, as part of the criminal code, establish a uniform standard of conduct for all citizens who serve as public officials or employees, whether on the state or local level;

(2) Divisions (D) and (E) of Section 102.03 of the Revised Code and Division (A) of Section 2921.43 of the Revised Code prohibit a county official or employee from accepting, soliciting, or using his position to secure travel, meal, and lodging expenses from a company that is doing or seeking to do business with his county department, even though the expenses are incurred in connection with the officials or employee's duty to inspect and observe the company's products in operation at facilities located within and outside the county;

(3) Divisions (D) and (E) of Section 102.03 of the Revised Code and Division (A) of Section 2921.43 of the Revised Code prohibit a county official or employee from accepting, soliciting, or using his position to secure travel, meal, and lodging expenses from a company doing or seeking to do business with his county, even if the county and the company enter into a written agreement which states that the county is under no obligation to purchase the company's products and services if county officials or employees accept payment of expenses from the company.

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In your letter to the Ohio Ethics Commission, you ask whether the Ohio Ethics Laws and related statutes prohibit you and employees in your county department from accepting travel, meal, and lodging expenses from companies which sell, or seek to sell services and products to your county department. You have also asked whether it would make a difference if the company and your county department agree in writing that your county department's receipt of travel, meal, and lodging expenses from the company will not obligate the county department to purchase the company's goods and services.

You have stated, by way of history, that you are an elected county official. You state that the operation of your county department entails the purchase of services and supplies, and that, in order to evaluate the services and products offered by various companies, you and employees under your supervision will seek information about a company's services, products, and operations. You state that, in response to an inquiry by your department, a company has expressed a desire to pay the travel, meal, and lodging expenses of either you or employees of

your department in order to provide an opportunity to inspect and observe the company's products in operation at public and private facilities located both within and outside the county. You also state that such direct observation will be helpful in enabling you to decide whether to purchase the company's products and services, and that payment of travel, meal, and lodging expenses by the company will relieve your county department of the burden of paying such expenses.

R.C. 102.03(D) and (E) provide:

(D) No public official or employee shall use or authorize the use of the authority or influence of his 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 him with respect to his 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 him with respect to his 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 who is an employee of any public agency. R.C. 102.01(C) defines "public agency" to include any department, division, board, commission, authority, bureau, or other instrumentality of a county, city, village, township, or other governmental entity. See R.C. 102.01(B) and (C). Therefore, all officers and employees of a county, as well as officers and employees of other political subdivisions of the state, are subject to the prohibitions of R.C. Section 102.03. See Ohio Ethics Commission Advisory Opinion No. 88-003.

The term "anything of value" is defined for purposes of R.C. 102.03 to include money, goods, chattels, any interest in realty, a promise of future employment, and every other thing of value. See R.C. 102.01(G) and R.C. 1.03. The Ethics Commission has previously determined that the payment of travel, meal, and lodging expenses is considered to be a thing of value for purposes of Section 102.03. See Advisory Opinions No. 84-010, 86-011, 87-005, 87-007, and 89-013. The issue, in this-instance, is whether the travel, meal, and lodging expenses which the company desires to provide to county officials and employees are of such character as to manifest a "substantial" and "improper" influence upon those officials and employees with respect to their duties. In Advisory Opinion No. 86-011, the Ethics Commission held:

With respect to the question of propriety, the focus is on the source of the thing of value. Whether the gift is substantial depends on the nature of the thing of value. (Emphasis added.)

See also Advisory Opinions No. 79-006 and 80-004. Therefore, in analyzing your question, it will be necessary to examine both the source and the nature of the thing of value which the county officials and employees would accept.

With regard to the source of the thing of value, the Commission has consistently held that Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a public official or employee from soliciting, accepting, or using his position to secure future employment, consulting fees, honoraria, conference registration fees, travel, meal and lodging expenses, or other things of value from a party that is interested in matters before, regulated by, or doing or seeking to do business with the public officials or employee's agency. See Advisory Opinions No. 77-003, 79-002, 79-006, 80-004, 84-010, 85-012, 86-003, 86-011, 87-006, 89-002, and 89-013. The Ethics Commission has consistently held that a public official or employee is prohibited from accepting a thing of value from any of these improper sources, even where the thing of value would be given to the public official or employee in connection with his official position and would benefit his public agency. See Advisory Opinions No. 86-011, 89-002, and 89-013. The Commission explained in Advisory Opinion No. 89-002 that:

The direct payment or contribution of money or other items of value to a public official or employee from a party whose interests may depend upon the performance of that officials or employee's official responsibilities is of such character as to unduly influence or impair the objectivity of the official or employee, and thus is prohibited by R.C. 102.03. (Emphasis added.)

See also Advisory Opinion No. 84-010.

The Commission has further held that R.C. 102.03 prohibits a public official or employee from indirectly receiving anything of value from a party that is interested in matters before, regulated by, or doing or seeking to do business with his public agency. See Advisory Opinion No. 89-013. In Advisory Opinion No. 89-013, the Ethics Commission held that Section 102.03 prohibits a vendor from reimbursing the Department of Mental Retardation and Developmental Disabilities for the travel, meal, and lodging expenses incurred by Department employees in visiting a site to evaluate the vendor's product used in a facility setting.

As noted above, a thing of value must also be of a "substantial" nature. See Advisory Opinion 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 Section 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 items or expenses which are not nominal or de minimus in value are of "substantial" value. See Advisory Opinion No. 86-003. See e.g., Advisory Opinions No. 79-002, 79-006, 80-004, 84-010, 85-012, 86-003, and 87-007. By way of example, the Commission noted in Advisory Opinion No. 86-011:

In general, a meal in a company cafeteria in the course of an inspection of a plant or facility, or a meal provided to a public official or employee in conjunction with a speech given before a regulated party or industry would not be of such a character as to manifest

a substantial and improper influence upon that official or employee. Similarly, a necessary auto or helicopter tour of a plant or facility in the course of an inspector's official duties would not, in general, constitute a substantial and improper influence.

However, the Commission has warned that de minimus or nominal items or expenses could have a substantial cumulative value if extended over time and that a public official or employee's acceptance of a thing of value from certain parties could create the appearance of impropriety. See Advisory Opinion No. 86-003. The Commission has generally held that travel, meal, and lodging expenses do not fall within the category of nominal or de minimus things of value. See Advisory Opinions No. 80-004, 84-010, 85-012, 86-011, 87-005, 87-007, 89-002, and 89-013.

The above-cited opinions address circumstances in which travel, meal, and lodging expenses would be received by officials and employees of a state agency from parties interested in matters before, regulated by, or doing or seeking-to do business with the state agency. However, the prohibitions of Section 102.03 apply equally to all public officials and employees whether on the state or local level. See R.C. 102.01(C). The Ethics Commission held in Advisory Opinion 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. The provisions are part of the criminal code, which operates uniformly through the state. (Emphasis added.)

Therefore, Divisions (D) and (E) of Section 102.03 would prohibit an official or employee of a county department from accepting, soliciting, or using the authority or influence of his position to secure travel, meal, lodging, or other expenses from a company that is doing business, or seeking to do business, with his county department, even though such expenses would be incurred in order for county officials and employees to inspect and observe the company's operations. See also R.C. 102.03(F) (prohibiting a person from promising or giving to a public official or employee anything of value that is of such character as to manifest a substantial and improper influence upon him with respect to his duties).

You have argued that the payment of travel, meal, and lodging expenses by a vendor relieves the county of the burden of paying for such expenses. Although budgetary considerations are of great concern to any political subdivision, the prohibitions of R.C. 102.03 must override the political subdivision's desire to maximize its budget by accepting financial assistance from outside sources, where the officials and employees of that political subdivision are charged with objectively and impartially considering and determining matters which directly affect the pecuniary interests of that party. See generally Advisory Opinion No. 86-011 (citing the example that a public official or employee is prohibited from receiving from a regulated party the expenses incurred in the inspection of a site or facility required as part of a permit application, enforcement action, or compliance review).

Further, the fact that in this instance you propose that the company and the county agree in writing that the receipt of travel, meal, and lodging expenses for yourself or employees of your county department will not obligate the county department to purchase the company's goods or

services does not alter the prohibitions of Divisions (D) and (E) of Section 102.03. The prohibitions imposed by R.C. 102.03 (D) and (E) serve the public's interest in objective, impartial, and effective government by preventing the creation of situations which could impair the objectivity and impartiality, and therefore the effectiveness, of a public official or employee, or his public agency, in matters affecting an interested or regulated party, or a party doing business or seeking to do business with the public agency. The proposed "no obligation" clause may serve to document that the county is not legally bound to purchase the company's goods and services and that the company would have no recourse against the county for the recovery of the costs of the travel, meal, and lodging expenses paid to county officials and employees if the county should decide not to purchase the company's goods and services. However, such a statement would not negate the potential impairment of a public officials or employee's objectivity and impartiality in matters involving the donor of the thing of value.

The Ethics Commission has held, however, that a public official or employee may accept travel expenses from a party that is doing business with his governmental agency where the bid specifications, and ultimately, the contract executed between the parties, specifically include the requirement that trips are to be provided by the contracting party to the agency's officials and employees for the purpose of conducting official business. See Advisory Opinion No. 87-007. The agency, by including the costs of trips in bid specifications and in the final contract, pays consideration for such trips, and ultimately bears the cost of such trips. Id. See also Advisory Opinion No. 89-013.

The payment of a public officials or employee's expenses by a source other than the employing public agency also implicates the prohibitions of Section 2921.43(A), which reads:

(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.

A "public servant" is defined, for purposes of this section, to include an elected or appointed officer or employee of any political subdivision of the state. See R.C. 2921.01(A) and (B). R.C. 2921.43(A)(1) prohibits a county officer or employee 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. R.C. 2921.43(A)(1) also prohibits any person from promising or giving to a public servant any such outside compensation.

The Ethics Commission has held that the term "compensation," as used in R.C. 2921.43, includes travel, meal, and lodging expenses and that nothing in Divisions (G), (H), or (I) of Section 102.03 allows a public official or employee to accept expenses from a vendor desiring to do business with his agency in order to view and evaluate the vendor's product, an act which is clearly within the performance of the officials or employee's public duties. See Advisory Opinion No. 89-013. Therefore, R.C. 2921.43(A) prohibits a county officer or employee from accepting travel, meal, and lodging expenses from a company that is doing or seeking to do business with his county department in order to view and evaluate the vendor's product.

This advisory opinion is based on the facts presented, and is limited to questions arising under Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code.

Therefore, it is the opinion of the Commission, and you are so advised, that: (1) The Ohio Ethics Law and related statutes are general laws which, as part of the criminal code, establish a uniform standard of conduct for all citizens who serve as public officials or employees, whether on the state or local level; (2) Divisions (D) and (E) of Section 102.03 of the Revised Code and Division (A) of Section 2921.43 of the Revised Code prohibit a county official or employee from accepting, soliciting, or using his position to secure travel, meal, and lodging expenses from a company that is doing or seeking to do business with his county department, even though the expenses are incurred in connection with the officials or employee's duty to inspect and observe the company's products in operation at facilities located within and outside the county; and (3) Divisions (D) and (E) of Section 102.03 of the Revised Code and Division (A) of Section 2921.43 of the Revised Code prohibit a county official or employee from accepting, soliciting, or using his position to secure travel, meal, and lodging expenses from a company doing or seeking to do business with his county, even if the county and the company enter into a written agreement which states that the county is under no obligation to purchase the company's products and services if county officials or employees accept payment of expenses from the company.



Richard D. Jackson, Chairman
Ohio Ethics Commission