



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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Advisory Opinion Number 94-003
September 30, 1994

Syllabus by the Commission:

Division (A)(7) of Section 102.02 of the Revised Code requires a public official or employee who files a financial disclosure statement, and is not otherwise exempted by Section 102.022 of the Revised Code, to report as the source of a gift any party who has provided gifts to the official or employee when the value of all of the gifts received, during the preceding calendar year, exceeds seventy-five dollars.

* * * * *

You state that you are an elected public officer of a political subdivision and are paid over \$16,000 annually for your public service. You state that, at five separate times during this calendar year, you have received five items from an individual who is a personal acquaintance. The individual is not interested in matters before, regulated by, or doing or seeking to do business with your political subdivision.

The individual has told you that the items are intended for your personal use and benefit. The individual has stressed that they are neither donations to the city nor political contributions to your campaign committee. See R.C. 9.20 (authorizing a political subdivision to receive donations from outside sources) and R.C. 3517.081 (candidates shall establish a campaign committee for the purpose of receiving contributions). The individual is not related to you by blood or marriage. Each item has a market value of approximately twenty to twenty-five dollars. You have asked for guidance for disclosing your receipt of these items on your financial disclosure statement. R.C. 102.02 (A)(7) reads in pertinent part:

(A) Every person who is elected to or is a candidate for a . . . city office . . . shall file with the appropriate ethics commission on a form prescribed by the commission, a statement disclosing: . . .

(7) Except as otherwise provided in section 102.022 of the Revised Code, the source of each gift of over seventy-five dollars, . . . received by the person in his own name or by any other person for his use or benefit during the preceding calendar year,

R.C. 102.02 (A)(7) provides an exception for gifts which are provided by some of the public official's or employee's relatives. The facts in the instant situation do not fall within this

exception since, as stated above, the individual who has provided the items is not related to you by blood or marriage.

You have asked whether R.C. 102.02 (A)(7) requires you to report, as a source of a gift, a party who has provided gifts to you, where the value of all of the items received, during the preceding calendar year, exceeds seventy-five dollars or whether R.C. 102.02 (A)(7) does not require you to disclose any of the items because none of the items that you have received from the individual, during the calendar year, exceeds seventy-five dollars in value.

The threshold issue is whether the items provided to you by the party are "gifts" for purposes of R.C. 102.02 (A)(7). The word "gift" is not statutorily defined for purposes of Chapter 102. The Ethics Commission, in interpreting statutes which contain words which are not statutorily defined, has consistently followed the rule of statutory construction that words used in a statute must be construed according to rules of grammar and common usage. See R.C. 1.42. See also Ohio Ethics Commission Advisory Ops. No. 75-004, 87-002, and 89-001.

Black's Law Dictionary (5th ed. 1979) defines the word "gift" as "[a] voluntary transfer of property to another without consideration . . . [e]ssential requisites of "gift" are capacity of donor, intention of donor to make gift, completed delivery to or for donee, and acceptance of gift by donee." Ohio courts have relied upon this definition to conclude that a gift is a voluntary transfer of property by one to another without any consideration or compensation therefore. See Hamon v. Moore 8 Ohio St. 239 (1858). The fact that conditions may be attached to the receipt of the gift does not destroy the qualities of the gift; many gifts are made for certain purposes subject to conditions imposed by the donor. See MacLean v. MacLean Co. 57 Ohio Op. 454, 457 (P.Ct. Franklin County 1955). See also Advisory Op. No. 89-002 (describing conditions attached to donations of equipment made to the Industrial Commission).

Therefore, the items provided to you by the party are "gifts" for purposes of R.C. 102.02 (A)(7). The issue becomes whether R.C. 102.02 (A)(7) requires you to report, as a gift from a party, the value of all of the items that you have received from the party through December 31st of the calendar year for which a financial disclosure statement is being filed.

The Ethics Commission has held that, in the same manner as a court, its interpretation of a statute must give effect to the intent of the legislature in enacting the statute. See Advisory Op. No. 89-001. See also R.C. 1.49 (in determining the intent of the legislature, whenever a statute is ambiguous, the object sought to be attained, the circumstances under which the statute was enacted, the legislative history, and the consequences of a particular construction must be considered). Furthermore, when a statute is designed to provide a remedy for a particular problem or mischief, the statutory language must be given a construction to advance the remedy and correct the problem. See R.C. 1.49. See also The Iroquois Co. v. Meyer, 80 Ohio St. 676 (1909).

Before the enactment of Am. Sub. H.B. 492, 120th Gen. A. (1994) (eff. May 12, 1994), the Ethics Commission, in Advisory Opinion No. 89-001, explained the intent and purpose of the financial disclosure requirement imposed by R.C. 102.02, holding:

R.C. 102.02, the financial disclosure law, is part of Chapter 102., the Ohio Ethics Law, which governs the conduct of all public officials and employees and prohibits them from using their official position to benefit their personal interests or the interests of others with whom they hold certain, personal relationships. The financial disclosure requirement of R.C 102.03 reminds public officials and employees of their responsibility to avoid conflicts of interest and assists the public and the Ethics Commission in monitoring areas of potential conflict of interest.

Prior to the enactment of Am. Sub. H.B. 492, R.C. 102.02 (A)(7) established a threshold of \$500 for gift reporting and R.C. 102.02 (A)(2) established a threshold of \$500 for source of income reporting. The General Assembly, in Am. Sub. H.B. 492, amended R.C. 102.02 (A)(7), for public officials in your position, to substantially lower the threshold to \$75 for gift reporting and to completely remove the threshold for source of income reporting. In addition, the General Assembly, in Am. Sub. H.B. 492 and Am. Sub. H.B. 285, 120th Gen. A. (1994) (eff. March 2, 1994) which were enacted in the same session of the General Assembly and also amended R.C. 102.02 (A), imposed the requirement to file a financial disclosure statement upon classes of public officials and employees who were not previously required, by statute, to file. See R.C. 102.02 (A) (all school district superintendents, treasurers, and business managers; members of boards of education in school districts with over 12,000 students; state employees paid a salary or wage in accordance with schedule E-2 of R.C. 124.152; and the president or other chief administrative officer of every state institution of higher education).

It is apparent that the General Assembly did not, in its amendments to R.C. 102.02 in Am. Sub. H.B. 285 and Am. Sub. H.B. 492, alter the intent and purpose of the financial disclosure requirement as explained in Advisory Opinion No. 89-001. It is obvious that the General Assembly has recognized the importance of the financial disclosure requirement in reminding public officials and employees of their responsibility to avoid conflicts of interest and assisting the public and the Ethics Commission to monitor areas of potential conflict through a number of legislative changes, among them requiring disclosure of personal financial information from additional classes of public officials and employees, lowering the gift threshold to \$75 from \$500, and removing the source of income threshold.

Thus, the object sought to be attained by amending R.C. 102.02 (A) is a more comprehensive disclosure of personal financial information by a greater number of public officials and employees. Furthermore, it must be remembered that Am. Sub. H.B. 492 was enacted due to concerns which arose regarding the propriety of members of the General Assembly accepting honorarium which was not required to be disclosed on their financial disclosure statement; thus, a more comprehensive disclosure of personal financial information by public officials and employees was enacted as a means to promote public confidence in the integrity of government. See also R.C. 102.03 (H) (prohibiting the receipt of an honorarium).

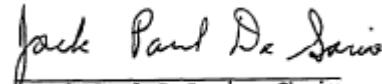
It strains logic to suggest that the object of more comprehensive disclosure of personal financial information by officials and employees in order to promote public confidence in the integrity of government would be obtained by not requiring officials and employees to report, as the source of a gift, any party who has provided gifts to the official or employee where the value of all of the gifts received, during the preceding calendar year, exceeds seventy-five dollars. See Advisory Op. No. 89-001 (the financial disclosure statement reflects the calendar year

immediately preceding the date on which the statement is required to be filed). For example, such a construction of R.C. 102.02 (A)(7) would enable a public official or employee to receive a gift of fifty-dollars every day of the year from the same source without being required to report this information on his financial disclosure statement. It is obvious that if R.C. 102.02 (A)(7) were constructed other than to require full disclosure, as described above, the intent and purpose of the Ethics Law could be easily circumvented and there would exist an opportunity for public officials or employees to accept a substantial thing of value in violation of the Ethics Law, as well as other criminal statutes which are outside the Ethics Commission's jurisdiction, see e.g., R.C. 2921.02, while escaping the scrutiny of the Ethics Commission and the public.

It must be noted that the General Assembly enacted R.C. 102.022 in Am. Sub. H.B. 492 which continues the \$500 threshold for gift and source of income reporting for many public officials and employees who receive a lower level of compensation for the performance of their official duties. Public officials and employees in political subdivisions who receive less than \$16,000 per calendar year for their public service, and college and university trustees, who are not compensated for their duties, except for expenses, are subject to this \$500 threshold. Accordingly, a public official or employee who files a financial disclosure statement and is subject to the reporting requirements of R.C. 102.022 must likewise report, as the source of a gift, any party who has provided gifts to the official or employee when the value of all of the gifts received, during the preceding calendar year, exceeds \$500 dollars.

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: Division (A)(7) of Section 102.02 of the Revised Code requires a public official or employee who files a financial disclosure statement, and is not otherwise exempted by Section 102.022 of the Revised Code, to report as the source of a gift any party who has provided gifts to the official or employee when the value of all of the gifts received, during the preceding calendar year, exceeds seventy-five dollars.



Jack Paul DeSario
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