



OHIO ETHICS COMMISSION

150 EAST BROAD STREET
COLUMBUS 43215
(614) 466-7090

Advisory Opinion
No. 79-006
October 19, 1979

Syllabus by the Commission:

Division (D) of Section 102.03 of the Revised Code prohibits a public official or employee from soliciting or receiving an honorarium for delivering a speech or participating in a seminar sponsored by a private corporation, if the honorarium is received from a party interested in matters before the agency with which the official or employee serves, or regulated by the agency.

In your request for an Ohio Ethics Commission Advisory Opinion, you asked whether the Ohio Ethics Law would prohibit a public employee from receiving an honorarium for participation in a seminar sponsored by a private corporation that is regulated by the department by which the person is employed.

You stated, by way of history, that you are a division chief for a department of the state. Because of your expertise in a particular field, you have been asked to give a speech and participate in a panel discussion as part of a seminar sponsored by a private corporation that is regulated by the department. You asked whether receipt of a fee, in the form of an honorarium, for your participation in the seminar would be in violation of the Ohio Ethics Law.

Division (D) of Section 102.03 of the Revised Code provides:

No public official or employee shall use or attempt to use his official position to secure anything of value for himself that would not ordinarily accrue to him in the performance of his official duties, which thing is of such character as to manifest a substantial and improper influence upon him with respect to his duties.

The elements of Division (D) of Section 102.03 of the Revised Code are: 1) a public official or employee; 2) is prohibited from using or attempting to use his official position; 3) to secure anything of value for himself; 4) the thing of value must be something that would not ordinarily accrue to him in the performance of his official

duties; and 5) the thing of value must be of such character as to manifest a substantial and improper influence upon him with respect to his duties. Violations of Division (D) of Section 102.03 of the Revised Code depend upon the specific facts and circumstances of the particular case.

A person employed as a division chief by a department of the state is a "public official or employee" as that term is defined in Division (B) of Section 102.01 of the Revised Code. A fee for services in the form of an honorarium is a "thing of value" that would not ordinarily accrue to a division chief of a department of the state in the performance of his official duties. You noted that you are often asked to give speeches or participate in seminars as part of your employment, without additional compensation. In addition, the Ohio Ethics Commission believes that solicitation or acceptance of a fee, in the form of an honorarium, for a speech and other participation in a seminar could constitute improper use or attempted use of official position under this provision, depending on the facts and circumstances of the particular case.

The application of Division (D) of Section 102.03 of the Revised Code turns on whether receipt of an honorarium would be "of such character as to manifest a substantial and improper influence upon (the public official or employee) with respect to his duties." This is a question of fact that depends on: 1) the nature of the honorarium; and 2) the party from whom it is received. The Commission believes that receipt of a fee, in the form of an honorarium, from a party "interested" in matters before the department or division with which the public official or employee serves, or "regulated" by the agency, may manifest a substantial and improper influence upon the official or employee with respect to his duties, since it could affect subsequent decisions by the official or employee in matters involving the donor of the honorarium.

We conclude, therefore, that Division (D) of Section 102.03 of the Revised Code prohibits a public official or employee from soliciting or receiving an honorarium for delivering a speech or participating in a seminar sponsored by a private corporation, if the honorarium is received from a party which is either interested in matters before the agency with which the official or employee serves, or regulated by that agency.

Your attention is directed to Division (A) of Section 2921.43 of the Revised Code, which prohibits any public servant from knowingly soliciting or receiving "any compensation or fee, other than as allowed by law, to perform his official duties," and Section 2921.02 of the Revised Code, which prohibits any promise, offer, or gift of any valuable thing or valuable benefit to a public official or employee with purpose to corrupt or influence him with respect to his

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official duties. The Commission makes reference to these provisions for your information.

The conclusions of this advisory opinion are based on an examination of the facts presented. The Ohio Ethics Commission cautions that its advisory opinions may be relied upon only with respect to questions arising under Chapter 102. and Section 2921.42 of the Revised Code, and do not address possible violations of other laws or rules.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that: Division (D) of Section 102.03 of the Revised Code prohibits a public official or employee from soliciting or receiving an honorarium for delivering a speech or participating in a seminar sponsored by a private corporation, if the honorarium is received from a party interested in matters before the agency with which the official or employee serves, or regulated by the agency.

Mary K. Lazarus

MARY K. LAZARUS, CHAIRPERSON