

# OHIO ETHICS COMMISSION

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April 3, 2001

Informal Opinion 2001-INF-0403

Nancy H. Massie, Assistant Prosecuting Attorney  
Richland County



Dear Ms. Massie:

In a letter received by the Ohio Ethics Commission on June 20, 2000, you have asked whether the Ohio Ethics Law and related statutes prohibit a County Recorder's Office from accepting coupons for free tuition at a local college in exchange for allowing students from the local college to intern in the Recorder's Office.

## Opinion Summary

The Ethics Law and related statutes generally prohibit a public official from accepting anything of value from a party that is doing or seeking to do business with, regulated by, or interested in matters before the public official's public agency.

In the situation you have described, however, the County Recorder's Office is not prohibited from accepting coupons for free tuition from a local college, and employees of the County Recorder's Office are not prohibited from using the tuition coupons provided by their public employer, under the following circumstances: (1) The local college provides the tuition coupons to the Recorder's Office, and not to the employees directly; (2) The tuition coupons are not provided to the Recorder's Office in return for the promise of the Recorder's Office to provide a present or future direct financial benefit to the students of the local college, such as an offer of present or future employment; (3) The Recorder's Office determines which employees will be able to use the coupons, based on the need of the office for an employee to receive particular training as opposed to the individual personal interests of a particular employee that are unrelated to his or her public employment; (4) The tuition coupons are used only by employees of the Recorder's Office; (5) The Recorder, and any subordinate who is responsible for determining which employees will be able to use the tuition coupons, do not use the coupons; (6) The Recorder's Office approves the courses taken by the employees, and the courses are related to the employees' present or future job duties at the Recorder's Office; and (7) The employees who receive the tuition coupons effectively withdraw from participating in matters that directly affect the interests of the local college.

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It must be noted that this advisory opinion addresses a unique situation. The conclusions of this advisory opinion are dependent upon the specific facts that you have provided and the relationship between the County Recorder's Office and the local college.

### **Facts**

In your letter to the Commission, you indicate that students from a local college intern in the County Recorder's Office. You state that in exchange for providing the internship opportunity, the local college provides coupons to the Recorder's Office for free tuition at the college. You explain that credit hours for free tuition are earned based upon the number of hours that students spend at the Recorder's Office. You also explain that the college offers many courses that would be appropriate for employees of the Recorder's Office to take, such as courses dealing with computers, security, first aid, and public relations.

In a copy of a letter attached to your request for an advisory opinion, Mark Collins, Vice President for Academic and Student Services at North Central State College (NC State), explains to Sarah Davis, Richland County Recorder, that the Board of Trustees at NC State has approved an earned amount of free tuition for the employees of the Recorder's Office based on the Recorder's Office's acceptance of NC State students for clinical, practicum, or internship experiences. Mr. Davis explains that the coupons are redeemable only for the payment of tuition, and that all other applicable fees and costs must be paid by the student or the agency. Mr. Davis further explains that tuition coupons may be used by agency employees only, and that each coupon must be signed by the agency's executive director or his or her designee.

### **Accepting Tuition Coupons From NC State—R.C. 102.03(D) and (E)**

The question that you have presented to the Ethics Commission implicates R.C. 102.03(D) and (E), which provide the following:

- (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 a county. R.C. 102.01(B) and (C). Therefore, employees of a county recorder's office are public officials or

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employees for purposes of R.C. 102.03(D) and (E). See Ohio Ethics Commission Advisory Opinion No. 81-007.

The term "anything of value" has been defined, for purposes of R.C. 102.03(D), to include money, goods, and any other thing of value. R.C. 1.03; R.C. 102.01(G). The tuition coupons provided by NC State would fall within the definition of "anything of value." See Adv. Op. No. 93-007.

Generally, R.C. 102.03(D) and (E) prohibit a public official or employee from accepting, soliciting, or using the authority or influence of his public office or employment to secure anything of value, either for himself, or for another party, where the thing of value could impair his objectivity and independence of judgment with respect to his official actions and decisions for the agency that he serves. Adv. Ops. No. 87-009, 88-005, 92-009, and 92-019.

A thing of value is generally considered to be of an improper character for purposes of R.C. 102.03(D) and (E) whenever the thing of value is secured from a party that is interested in matters before, regulated by, or doing or seeking to do business with the public agency with which the official or employee serves, or where the thing of value could impair the official's or employee's objectivity and independence of judgment with respect to his official actions and decisions for the public agency with which he serves or is employed. Adv. Ops. No. 89-006, 90-012, and 92-009.

The Ethics Commission has explained that a public official or employee must exercise his duties without hindrance by any improper influence. Adv. Op. No. 89-010. The prohibitions imposed by R.C. 102.03(D) and (E) serve the public interest in effective, objective, and impartial government by preventing the creation of a situation that may impair the objectivity and independence of judgment of a public official or employee. Adv. Ops. No. 89-014 and 90-002. The application of R.C. 102.03(D) and (E) is dependent upon the facts and circumstances of each individual situation. Adv. Ops. No. 87-007 and 89-003.

In the situation that you have presented, NC State is doing business with the Recorder's Office. However, the business relationship appears to be limited to the internship program, and perhaps the filing of documents by NC State with the Recorder's Office. The nature of this relationship stands in contrast to a relationship where a public office would have pervasive regulatory authority over those persons or companies that are the source of a thing of value. See Adv. Ops. No. 92-018 (public employees prohibited from accepting conference registration fees from an association where public employees have regulatory authority over members of the association) and 80-004 (public employees prohibited from accepting conference registration fees from a regulated party). Therefore, it is necessary to further examine the nature of the thing of value, and the relationship between the source and recipient of the thing of value.

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In the specific situation you describe, the thing of value provided to a public official is not personal in nature, there is an indirect rather than direct relationship between the source of the thing of value and the recipient of the thing of value, and the recipient of the thing of value does not participate in matters in which the provider of the thing of value would have a definite and direct interest. These factors suggest that the receipt of the thing of value by your office would not manifest a substantial and improper influence upon the public official with respect to his public duties. Therefore, in the situation that you have presented to the Commission, employees of the County Recorder's Office are not prohibited, by virtue of R.C. 102:03(D) and (E), from accepting tuition coupons issued by NC State under the following conditions: (1) The local college provides the tuition coupons to the Recorder's Office, and not to the employees directly; (2) The tuition coupons are not provided to the Recorder's Office in return for the promise of the Recorder's Office to provide a present or future direct financial benefit to the students of the local college, such as an offer of present or future employment; (3) The Recorder's Office determines which employees will be able to use the coupons, based on the need of the office for an employee to receive particular training as opposed to the individual personal interests of a particular employee that are unrelated to his or her public employment; (4) The tuition coupons are used only by employees of the Recorder's Office; (5) The Recorder, and any subordinate who is responsible for determining which employees will be able to use the tuition coupons, do not use the coupons; (6) The Recorder's Office approves the courses taken by the employees, and the courses are related to the employees' present or future job duties at the Recorder's Office; and (7) The employees who receive the tuition coupons effectively withdraw from participating in matters that directly affect the interests of the local college.

**Having an Interest in the Acquisition of Services by Recorder's Office—R.C. 2921.42(A)(4)**

Your question also implicates R.C. 2921.42(A)(4), which provides that no public official shall knowingly:

Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which he is connected.

The term "public contract" includes any purchase or acquisition of property or services "by or for the use of" any political subdivision. R.C. 2921.42(G)(1). Purchases by a political subdivision that are made on a casual or "as needed" basis, as well as purchases made pursuant to a formal contract, are considered to be "public contracts" for purposes of R.C. 2921.42. See Adv. Op. No. 87-002. The acquisition of the services of the interns from NC State is a public contract for purposes of the prohibitions of R.C. 2921.42. The question is whether employees of the Recorder's Office would have an interest in this public contract if they were to accept tuition coupons from NC State.

A prohibited "interest" in a public contract must be definite and direct, and may be either pecuniary or fiduciary in nature. Adv. Op. No. 89-008. Employees of the Recorder's Office would have a pecuniary interest in the tuition coupons if they were to use them to benefit their private outside interests, rather than to benefit the operation of the Recorder's Office. If, however, the employees of the Recorder's Office are provided the tuition coupons under the seven conditions discussed above, they would not have a pecuniary or fiduciary interest in the tuition coupons, and would not have a prohibited interest in a public contract for purposes of R.C. 2921.42(A)(4).

**Accepting Outside Compensation for Performance of Public Duties—R.C. 2921.43(A)(1)**

Finally, your question implicates R.C. 2921.43(A)(1) which provides the following:

- (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.

The term "public servant" is defined, for purposes of R.C. 2921.43, as any elected or appointed officer, or employee, or agent of the state or any political subdivision, or any person performing ad hoc a governmental function. See R.C. 2921.01(A) and (B). Employees of a county recorder's office are "public servant(s)" for purposes of R.C. 2921.43.

R.C. 2921.43(A)(1) prohibits employees of the County Recorder's Office 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 their public capacities or generally perform the duties of their public positions. Division (G) of Section 102.03 relates to campaign contributions; Division (H) relates to honoraria, and travel, meal, and lodging expenses incurred by a public official or employee in making a speech or other personal appearance; and Division (I) relates to conference fees and travel, meal, and lodging expenses incurred by a public official or employee in attending a conference, seminar, or similar event. The exceptions in Divisions (G), (H), and (I) do not apply to the situation that you have presented.

R.C. 2921.43(A)(1) prohibits employees of the County Recorder's Office from accepting compensation from any person, except the County, for performing the general duties of their positions with the Recorder's Office. In the situation you have described, the payment of tuition would not be prohibited supplemental compensation provided that the coupons are not distributed as payment for the performance of the employee's public duties. Compliance with

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each of the seven conditions set forth above would ensure that the acceptance of tuition coupons would not be prohibited as supplemental compensation under R.C. 2921.43(A)(1).

### Conclusion

The Ethics Law and related statutes generally prohibit a public official from accepting anything of value from a party that is doing or seeking to do business with, regulated by, or interested in matters before the public official's public agency.

In the situation you have described, however, the County Recorder's Office is not prohibited from accepting coupons for free tuition from a local college, and employees of the County Recorder's Office are not prohibited from using the tuition coupons provided by their public employer, under the following circumstances: (1) The local college provides the tuition coupons to the Recorder's Office, and not to the employees directly; (2) The tuition coupons are not provided to the Recorder's Office in return for the promise of the Recorder's Office to provide a present or future direct financial benefit to the students of the local college, such as an offer of present or future employment; (3) The Recorder's Office determines which employees will be able to use the coupons, based on the need of the office for an employee to receive particular training as opposed to the individual personal interests of a particular employee that are unrelated to his or her public employment; (4) The tuition coupons are used only by employees of the Recorder's Office; (5) The Recorder, and any subordinate who is responsible for determining which employees will be able to use the tuition coupons, do not use the coupons; (6) The Recorder's Office approves the courses taken by the employees, and the courses are related to the employees' present or future job duties at the Recorder's Office; and (7) The employees who receive the tuition coupons effectively withdraw from participating in matters that directly affect the interests of the local college.

It must be noted that this advisory opinion addresses a unique situation. The conclusions of this advisory opinion are dependent upon the specific facts that you have provided and the relationship between the County Recorder's Office and the local college.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on February 23, 2001. The opinion is based on the facts presented and is limited to questions arising under Chapter 102, and Sections 2921.42, 2921.421, and 2921.43 of the Revised Code and does not purport to interpret other laws or rules. If you have any questions or desire additional information, please contact this Office again.

Sincerely,



Timothy L. Gates  
Staff Attorney