

OHIO ETHICS COMMISSION

Sarah M. Brown, *Chairman*
Robert Browning, *Vice Chairman*



8 East Long Street, 10th Floor
Columbus, Ohio 43215
Telephone: (614) 466-7090
Fax: (614) 466-8368
Web site: www.ethics.ohio.gov

David E. Freel, *Executive Director*

March 17, 2006

Informal Opinion 2006-INF-0317

The Honorable Juergen A. Waldick
Allen County Prosecuting Attorney

Dear Prosecutor Waldick:

On February 28, 2006, the Ohio Ethics Commission received your request for an advisory opinion. In your letter, you asked whether the Ohio Ethics Law and related statutes prohibit a teacher for the Allen County Board of Mental Retardation and Developmental Disabilities (MRDD) from accepting a special award and a \$10,000 check for her personal use from the Mr. Holland's Opus Foundation (Foundation). The Foundation is a nonprofit 501(c)(3) corporation in California that supports music education.

According to a letter from the Foundation, the award is made to music teachers in recognition of their service to their students and the profession. To receive the Mr. Holland's Opus Foundation Award, a teacher must:

1. Instill a love of music in his or her students through instrumental instruction in grades K through 12;
2. Have the passion, dedication, and leadership skills to persevere under difficult circumstances;
3. Give generously of his or her time, energy, and talent, exceeding what is expected of music educators;
4. Demonstrate creativity regardless of availability of instruments, materials, classroom space, and budget limitations;
5. Inspire students and challenge them to attain the highest level of musicianship; and
6. Encourage musical growth through ongoing individual and group performances, auditions, and evaluations.

As a condition of receiving the award, the teacher must be available to attend the award presentation at Carnegie Hall in New York City. The Foundation will pay the teacher's travel and accommodation expenses to attend the ceremony. The award presentation is scheduled for March 24, 2006.

Brief Answer

As explained more fully below, the award you have described is not compensation to the teacher and R.C. 2921.43(A) does not prohibit the teacher from accepting the award or prohibit the Foundation from giving the award.

Supplemental Compensation

Your question raises issues under the supplemental compensation law, R.C. 2921.43(A), which provides:

- (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 the public servant's 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 exceptions set forth in R.C. 102.03(G) through (I) concern campaign contributions, and under certain circumstances, honoraria and travel, meal, and lodging expenses incurred in connection with a personal appearance or speech, or attendance at conferences, seminars, and similar events, and are not applicable to your question.

The term "public servant" is defined in R.C. 2921.01(B) to include "any public official." A "public official" is defined, in R.C. 102.01(B), as any person elected or appointed to any office with, or employed by, any political subdivision. An employee of a county board, including a board of mental retardation and developmental disabilities is an employee of a political subdivision, and therefore a "public servant" for purposes of R.C. 2921.43(A). See R.C. 5126.02 and Ohio Ethics Commission Advisory Opinion No. 96-005.

The word "compensation" is not defined for purposes of R.C. Section 2921.43. In Advisory Opinion No. 92-014, the Ethics Commission held:

A primary rule of statutory construction is that words used in a statute must be construed according to rules of grammar and common usage. See R.C. 1.42. Furthermore, statutes "must be construed in the light of the mischief they are designed to combat." City of Mentor v. Giordano, 9 Ohio St. 2d 140, 144 (1967). "Compensation" is defined as "payment for services: esp., wages or remuneration." See Webster's New World Dictionary 289 (2nd College Ed. 1972).

Prior to the time that the Ohio Ethics Commission was empowered to interpret R.C. 2921.43, the Attorney General, in Att'y Gen. Op. No. 84-019, addressed the prohibition of R.C. 2921.43(A)(1). In the opinion, the Attorney General stated:

R.C. 2921.43(A) is a codification of the common law rule that a public officer may not receive remuneration other than that allowed by law for the performance of his official duties. (Citations omitted.) Public officials and employees are not permitted to receive payment other than that provided by law for performing those duties for which they are responsible in their official capacity. See generally State v. McKelvey, 12 Ohio St. 2d 92, 95, 232 N.E.2d 391, 393 (1967) (“a public official cannot use his position for private profit”). See also State v. Livesay, 91 Ohio Misc. 208 (Jackson County February 19, 1988).

The Foundation, in this instance, will be giving the teacher a cash award in recognition of the teacher's excellence, based on the criteria set forth above. Even though the excellence of the teacher would be displayed in connection with the performance of her employment as a teacher, the award is not intended to be offered as “compensation,” or payment, for her services as a public servant. The award from an independent foundation made to a public servant for excellence under the criteria and circumstances you describe is not the same as a payment made to a public servant in consideration for the performance of specific or general job duties.

The fact that the Foundation is not located in Ohio and that it has no interest in matters before this teacher or the county board are indicators that the award is not intended as compensation.¹ Where there is the possibility that a public servant would be influenced by a thing of value provided to her, other provisions of the Ethics Law would also be implicated. See R.C. 102.03(E) (prohibits a public official or employee from soliciting or accepting anything of value that is of such a character as to have a substantial and improper influence upon her with respect to her duties).

Therefore, where the award is not being promised or offered in consideration for the performance of the teacher's official duties or as her compensation, R.C. 2921.43(A) does not prohibit the teacher from accepting the award or prohibit the Foundation from giving the award. Given the specific facts you have described, the award from the Foundation is not prohibited compensation to the teacher.

Conclusion

As explained more fully above, the award you have described is not compensation to the teacher and R.C. 2921.43(A) does not prohibit the teacher from accepting the award or prohibit the Foundation from giving the award.

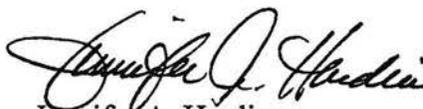
¹ For example, a cash award for teaching excellence from a parent or parent group whose children attend the school would have to be examined closely to determine whether the intention of the grantor was to provide compensation prohibited by R.C. 2921.43(A).

The Honorable Juergen A. Waldick
March 17, 2006
Page 4

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on March 17, 2006.

The 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. If you have any questions or desire additional information, please feel free to contact this Office again.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer A. Hardin".

Jennifer A. Hardin
Chief Advisory Attorney