

OHIO ETHICS COMMISSION

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David E. Freel, *Executive Director*

March 6, 2008

Informal Opinion 2008-INF-0306

Mary Noel, Counsel
e.Republic, Inc.

[REDACTED]

Dear Ms. Noel:

On December 12, 2007, the Ohio Ethics Commission received your letter requesting an advisory opinion on behalf of your client, e.Republic, Inc. In your letter, you explained that one of e.Republic's business units, Government Technology magazine (GT), produces the Ohio Digital Government Summit (Summit). You have asked for guidance about the fee structure of the 8th Annual Summit, to be held in October 2008.

Introductory Comments

The question regarding the Summit was raised by the Ohio Department of Administrative Services (DAS) last fall, just before the 2007 Summit. At that time, GT magazine was charging government employees \$50 and private sector parties \$1500 to attend the Summit. Subsequently, after discussions with DAS and the Ethics Commission, your clients have proposed a new fee structure that would not involve differing admission charges for government and private sector parties.

Brief Answer

As explained more fully below, the producers of the Summit must charge, and any attending public official or employee must pay, an admission fee that accurately reflects the actual value of the Summit, including the educational benefit received. R.C. 102.03(F) prohibits e.Republic and GT magazine from promising or giving officials and employees of state and local government agencies in Ohio a discount off the cost of an educational conference.

The Ethics Law does not prohibit companies that are doing or seeking to do business with, regulated by, or interested in matters before, state and local agencies whose employees attend the Summit from financially supporting the Summit through sponsorships, even though sponsorships will help defray the cost of the conference, provided that: (1) the Summit is of a genuine educational or informational character; and (2) the benefits arising from sponsorships are of an ordinary character, available to any person attending the Summit, and provided at the site of the Summit.

Facts

You have explained that the purpose of the Summit is to provide an educational and networking opportunity for state and local government information technology professionals in Ohio. The program for the Summit is educational and informational in nature.

You explained that GT magazine invites over 5,000 public sector technology professionals to the Summit. The admission charge for all public sector employees is \$99 for early registrants and \$125 for later registrants. The cost covers the Summit, coffee breaks, lunch, and a networking reception. Attendees receive no tangible items except promotional trinkets available at exhibition tables. You explained that the promotional items are valued at under (and usually far under) \$20.

Non-government individuals who wish to attend the event can do so only as sponsors of the event. There is no admission charge for private sector individuals. Employees of companies acting as sponsors can attend the event as representatives of their employers.

Conflict of Interest Law—R.C. 102.03(E) and (F)

Your question raises issues under R.C. 102.03 (E) and (F), which provide:

- (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.

- (F) No person shall promise or give to a public official or employee 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 "person" is defined to include any individual, corporation, partnership, association, or other similar entity. See R.C. 1.59. Your clients, e.Republic and GT magazine, and any of their representatives, fall within the definition of "person." Officials and employees of state and local government agencies in Ohio are public officials or employees, and are subject to the restrictions in R.C. 102.03(E).¹

¹ This provision is also applicable to members and employees of the Ohio General Assembly. However, the Ohio Ethics Commission is not the "appropriate ethics commission" to answer questions about how the laws apply to legislators and legislative employees. If employees of the Ohio General Assembly attend the Summit, you should contact the Joint Legislative Ethics Commission/Office of the Legislative Inspector General for guidance.

“Anything of value” includes money, goods and chattels, and every other thing of value. R.C. 102.01(G); 1.03. A discount falls within the definition of “anything of value.” Ohio Ethics Commission Advisory Opinions No. 92-015 and 98-001.

The Commission has explained that R.C. 102.03(F) prohibits the sponsor of an educational event from charging government officials and employees substantially lower admission fees than those charged to private sector attendees. See Adv. Op. No. 2001-08 and Informal Advisory Opinion to Neubert (November 1, 2006). The cost charged to any government attendee at a conference must reasonably reflect the actual value of the educational and other benefits he or she is receiving.

As noted above, GT magazine has decided that it will not offer two levels of admission fees for attendees of the Summit in 2008. Rather, the magazine will offer one admission charge (with a small discount for early registrants). The Commission’s decision is dependent on whether the admission charge accurately reflects the benefit that a person attending the seminar will receive. Provided that the admission charge GT magazine has set for the Summit accurately reflects the benefit a government official or employee who attends will receive at the Summit, R.C. 102.03(F) does not prohibit your client from offering the Summit to government officials and employees at that cost. Further, R.C. 102.03(E) does not prohibit public officials and employees from purchasing admission for and attending the event.

Sponsorships

With respect to sponsorships, the Commission considered a similar situation in Advisory Opinion No. 2002-02. In that opinion, the Commission was asked whether a private corporation could underwrite the cost of a meal, reception, or open house at a conference of public officials and employees. The corporation was doing or seeking to do business with, interested in matters before, or regulated by at least some of the public agencies represented at the conference. The Commission stated:

If the meal, reception, or open house is of an ordinary, routine character, and is provided to all officials and employees at the conference, and not limited to those who work with agencies that do business with the sponsoring party or those from whom the sponsor is specifically soliciting business, the meal, reception, or open house would not have a substantial and improper influence upon the public officials and employees who accept it. Therefore, R.C. 102.03(F) of the Revised Code does not prohibit a person from providing the cost of a meal, reception, or open house of an ordinary, routine character at a conference of public officials and employees, even though the total cost of the event may be substantial for the person.

However, it must be clear that the meal, reception, or open house is open to all of the officials and employees attending the conference, regardless of whether the public agencies they serve have a business, regulatory, or other relationship with the sponsor. The Commission understands that there may be some events that are attended primarily by officials and employees who perform specific job functions, sponsored by persons who do business with those officials and employees. The Ethics Law and related statutes do not prohibit such events, so long as all such officials and employees are invited. However, the conference must be of a genuine educational or informational character.

Adv. Op. No. 2002-02.

The Commission further concluded that R.C. 102.03(E) does not prohibit the officials or employees attending the conference from accepting meals, or attending receptions or open houses at the event, as long as they meet the parameters discussed above. It is especially important that the item or event is offered "at" the conference. In other words, the sponsored event cannot be at a restaurant or other site. However, R.C. 102.03(E) would prohibit an official or employee from accepting, and R.C. 102.03(F) would prohibit any person from promising or giving a public official or employee, any meal or entertainment of a lavish nature, even if the item is offered to all officials and employees attending the conference. Id.

The same conclusions would apply in this instance provided that the event is of a genuine educational or informational character. If the sponsorships paid to the conference organizer are used to cover costs associated directly with the conference, would benefit all attendees at the conference in the same way, and are not used to provide meals or entertainment of a substantial character to attendees (for example, off-site meals or tickets to off-site events such as plays and golf outings), the Ethics Law does not prohibit them. However, it must be clear that officials or employees attending the conference are paying registration fees of an amount that is reasonably commensurate with the actual benefit, including any educational benefit, received from the event.

Conclusion

As explained more fully above, the producers of the Summit must charge, and any attending public official or employee must pay, an admission fee that accurately reflects the actual value of the Summit, including the educational benefit received. R.C. 102.03(F) prohibits e.Republic and GT magazine from promising or giving officials and employees of state and local government agencies in Ohio a discount off the cost of an educational conference.

The Ethics Law does not prohibit companies that are doing or seeking to do business with, regulated by, or interested in matters before, state and local agencies whose employees attend the Summit from financially supporting the Summit through sponsorships, even though sponsorships will help defray the cost of the conference, provided that: (1) the Summit is of a genuine educational or informational character; and (2) the benefits arising from sponsorships

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are of an ordinary character, available to any person attending the Summit, and provided at the site of the Summit.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on February 29, 2008. 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 black ink, reading "Jennifer A. Hardin". The signature is written in a cursive style with a large, sweeping initial "J".

Jennifer A. Hardin
Chief Advisory Attorney

cc: Theresa R. Schaefer, Chief Legal Counsel