

Ben Rose, *Chair*
Betty Davis, *Vice Chair*
Merom Brachman
Michael A. Flack
Maryann B. Gall



OHIO ETHICS COMMISSION
William Green Building
30 West Spring Street, L3
Columbus, Ohio 43215-2256
Telephone: (614) 466-7090
Fax: (614) 466-8368

Paul M. Nick
Executive Director

www.ethics.ohio.gov

May 4, 2011

Informal Opinion 2011-INF-0504-2

Kathryn M. Hann
Clerk of Council

Dear Ms. Hann:

On January 25, 2011, the Ohio Ethics Commission received your letter requesting an advisory opinion. In your letter, you stated that:

- You are the Clerk of Council for the Ravenna City Council; and
- A council member offered you two tickets to a Cleveland Cavaliers game, valued at \$150.

Question and Brief Answer

Question: Can you accept this gift from the council member?

Answer: Yes, you can accept the tickets.

Soliciting or Accepting a Thing of Value

As council clerk, you are a public employee subject to the conflict of interest restriction contained in R.C. 102.03(E) which provides:

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.

Any employee of a city is a public employee subject to R.C. 102.03.¹ "Anything of value" is defined to include money and every other thing of value.² Tickets and other gifts and entertainment are all within the definition of "anything of value."³

R.C. 102.03(E) prohibits a public employee from soliciting or accepting a thing of value if the thing of value is of such a character as to manifest a substantial and improper influence upon the public employee with respect to her duties because: (1) it is of a substantial nature or value; and (2) it is from a source that is doing or seeking to do business with, regulated by, or interested in matters before the agency the employee serves.⁴ A thing of value manifests a substantial influence on a public official or employee if it could impair her objectivity and independence of judgment in matters affecting the source of the thing of value.⁵

Ohio's conflict of interest laws protect the public by prohibiting a public employee from accepting a benefit in situations where the thing of value would make it difficult or impossible for her to exercise the authority of her position in an unbiased and impartial manner.

Gifts Between Public Officials or Employees

The Commission has generally held that, absent an improper solicitation, or the use of authority by the potential recipient or someone else on the recipient's behalf attempting to secure the gift, the Ethics Law does not prohibit a public official or employee from voluntarily giving a gift of a modest character to another public official or employee.⁶

However, in Advisory Opinion No. 97-001, the Commission specifically addressed the issue of a public employee giving a substantial thing of value to an official or employee in a higher or supervisory position. In that opinion, the Commission held that the law prohibits a city employee from accepting a substantial thing of value, such as an incentive to retire where the retirement would allow a subordinate employee to be promoted into the superior employee's position, from the subordinate.

The Commission explained that the relationship between a superior and subordinate is the same as the relationship between an employer and an employee in that both the superior and employer hold a position of power and authority over the compensation, discipline, and employment-related benefits of a subordinate or employee. The Commission concluded that the superior's receipt of a thing of substantial value from the subordinate employee could impair the superior's objectivity and independence of judgment in matters that affect the subordinate. The Commission stated that even if the superior does not personally supervise the subordinate employee, the superior could use his or her relationships with other officials and employees to affect their decisions on matters involving the subordinate employee.⁷

In the City of Ravenna, Council has authority to make decisions regarding the clerk of council's appointment, duties, and salary.⁸ Because of this relationship, a council member's receipt of a substantial gift from the clerk of council could impair the council member's objectivity and independence of judgment in matters that could affect the clerk of council in the future. Additionally, the clerk of council's offer of such a substantial gift could have an influence on a council member with respect to his or her duties that affect the clerk of council.

Therefore, R.C. 102.03(E) would prohibit a council member from accepting, from the clerk of council, tickets valued at over \$150.

However, the Commission has explained that the possibility of conflict is less likely where the public employee receiving the gift is in a subordinate position and the public official or employee giving the gift is in a superior or supervisory position. Unless the subordinate employee has authority to make regulatory, service, or other decisions that definitely and directly benefit the public official or employee providing the thing of value, R.C. 102.03(E) does not prohibit the subordinate employee from accepting a gift from a higher ranking official or employee.⁹

Ravenna Clerk of Council

According to the Charter and Ordinances for the City of Ravenna, the clerk of council in Ravenna is responsible for performing mostly ministerial activities, such as keeping records of proceedings, preparing agenda for meetings, preparing and distributing copies of legislation and other documents, accepting and maintaining filings in her office, and calling meetings on the written request of the mayor or president of council.¹⁰ Based on these provisions, it appears that the clerk of council does not make decisions, set policy, or exercise any authority over members of city council. In that case, a clerk of council's receipt of a gift of substantial value from the council member could not impair the clerk's objectivity and independence of judgment in matters that affect the council member.¹¹

Provided that you do not have a position of authority over a member of council and do not have any authority to secure any personal benefits for the council member, R.C. 102.03(E) does not prohibit you from accepting tickets to a professional basketball game.

Supplemental Compensation—R.C. 2921.43(A)(1)

You should also be aware of R.C. 2921.43(A)(1), which prohibits a public servant from soliciting or accepting compensation, other than as allowed by law, to perform her official duties, to perform any other act or service in her public capacity, for the general performance of the duties of her employment, or as a supplement to her public compensation. A city council clerk is a public servant for purposes of R.C. 2921.43. "Compensation" includes anything of value that is given for services, whether in the form of cash, tangible goods, or other financial gains or benefits that accrue to the public servant.¹²

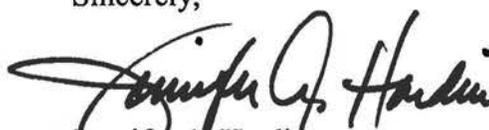
From the facts you have provided, it appears that the council member's purpose for offering these tickets is to provide you with a gift, rather than payment for your service as clerk of council. In that case, the tickets would not be "compensation" and R.C. 2921.43 would not prohibit you from accepting the gift. However, if the council member's purpose for giving you the tickets is to provide you with compensation for the performance of your job duties as council clerk, R.C. 2921.43(A)(1) would prohibit you from accepting the tickets.

Other Considerations

Although it is not absolutely prohibited by the Ethics Law, public officials and employees involved in this type of situation may want to consider both the appearance and advisability of a substantial gift provided by a superior or supervisory official or employee to a subordinate. The officials and employees should also consult with the law director or other legal advisor for the public entity to determine whether there are any local rules, policies, or ordinances that apply.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on April 28, 2011. 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,



Jennifer A. Hardin
Chief Advisory Attorney

The Ohio Ethics Commission Advisory Opinions referenced in this opinion are available on the Commission's Web site: www.ethics.ohio.gov.

¹ R.C. 102.01(B) and (C) and Ohio Ethics Commission Advisory Opinion No. 97-001.

² R.C. 1.03, 102.01(G); Adv. Ops. No. 82-002 and 89-003.

³ Adv. Ops. No. 95-001, 2001-03, and 2001-04.

⁴ Adv. Ops. No. 2001-03 and 2004-03.

⁵ Adv. Ops. No. 91-010 and 95-001.

⁶ Adv. Op. No. 2002-01.

⁷ Adv. Op. No. 97-001. See also Adv. Op. No. 89-008.

⁸ See Charter of the City of Ravenna X-10 and Codified Ordinances of Ravenna 220.001.

⁹ It should be noted that R.C. 102.03(F), which is not discussed in this opinion, prohibits a public official or employee from promising or giving a substantial thing of value to a higher level official or employee. Adv. Op. No. 97-001. Therefore, if you were to offer a gift of substantial value to the council member, R.C. 102.03(F) would apply and prohibit the gift.

¹⁰ See, e.g., Charter of the City of Ravenna X-5, X-6, and XI-6; Codified Ordinances of Ravenna 220.02, 220.10, 234.06, and 610.05.

¹¹ Id.

¹² Adv. Op. No. 2008-01.