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INFORMATION SHEET: ADVISORY OPINION NO. 2019-01
CEREMONIAL GIFTS

What is the question in the opinion?

Can a public official or employee accept a ceremonial gift, such as a personalized plaque, picture, framed certificate, trophy, or similar item if the gift is from a prohibited source and/or given in recognition of his or her public service?

What is the general restriction?

R.C. 102.03(D) and (E) prohibit a public official or employee from soliciting, accepting, or using his or her position to secure a gift of substantial value from any party that is doing or seeking to do business with, interested in matters before, or regulated by his or her public agency.

R.C. 2921.43(A) prohibits a public servant from soliciting or accepting any compensation, other than as allowed by law, to perform his or her official duties, to perform any other act or service in his or her public capacity, for the general performance of the duties of his or her public office or public employment, or as a supplement to his or her public compensation.

Both R.C. 102.03(D) and (E) and R.C. 2921.43(A) prohibit a public official or employee from accepting a ceremonial gift that has significant utilitarian value; is comprised of materials of significant monetary value; or could have general desirability or marketability as an artistic or collectible item.

What is the exemption?

Neither R.C. 102.03(D) and (E) nor R.C. 2921.43(A) prohibit a public official or employee from accepting an unsolicited, purely ceremonial gift that has little intrinsic, marketable, or utilitarian value and is intended for presentation purposes, such as a personalized plaque, picture, framed certificate, trophy, or similar item.

To whom do the conclusions in this opinion apply?

The conclusions apply to any similarly situated state or local public officials and employees.

When did the conclusions in this opinion become effective?

The opinion became effective upon acceptance by the Commission.

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Advisory Opinion
Number 2019-01
December 6, 2019
Ceremonial Gifts

Syllabus by the Commission:

- (1) Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a public official or employee from soliciting, accepting, or using his or her position to secure a gift of substantial value, from any party that is interested in matters before, regulated by, or doing or seeking to do business with his or her public agency.
- (2) R.C. 2921.43(A) prohibits a public servant from soliciting or accepting any compensation, other than as allowed by law, to perform his or her official duties, to perform any other act or service in his or her public capacity, for the general performance of the duties of his or her public office or public employment, or as a supplement to his or her public compensation.
- (3) Both R.C. 102.03(D) and (E) and R.C. 2921.43(A) prohibit a public official or employee from accepting a ceremonial gift that has significant utilitarian value; is comprised of materials of significant monetary value; or could have general desirability or marketability as an artistic or collectible item if the gift is from a prohibited source and/or given in recognition of his or her public service.
- (4) Neither R.C. 102.03(D) and (E) nor R.C. 2921.43(A) prohibit a public official or employee from accepting an unsolicited, purely ceremonial gift that has little intrinsic, marketable, or utilitarian value and is intended for presentation purposes, such as a personalized plaque, picture, framed certificate, or trophy, or similar item.

* * *

The Ohio Ethics Commission is often asked if it is a conflict of interest for a public official or employee to accept a ceremonial gift, such as a personalized plaque, picture, trophy, or framed certificate from a person or entity that is doing or seeking to do business with, interested in matters before, or regulated by his or her public agency. For example, a professional organization might want to honor a longstanding member, who is also a public official, with a plaque in recognition of his or her exceptional voluntary service to the organization. The award is not related to the official's performance of his or her public duties, but the members of the organization are regulated by his or her public agency. If the public official accepts the plaque, would this be a prohibited conflict of interest?

The Ohio Ethics Commission also has been asked if such a ceremonial gift is considered prohibited supplemental compensation. For example, a local community association may wish to present a public victim advocate with a framed certificate in recognition of the work he or she does with victims of crime. If the public employee accepts the framed certificate, would this be considered prohibited supplemental compensation?

Accepting Anything of Value

Persons who are elected, appointed, or employed by a public agency are subject to R.C. 102.03(D) and (E), which state:¹

- (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 "anything of value" is defined, for purposes of R.C. 102.03, to include money, goods and chattels, and every other thing of value.² A gift that is of a substantial nature or value is a thing of value for purposes of R.C. 102.03.³

A thing of value is "of such a character as to manifest a substantial and improper influence" on a public official or employee if it is "of such a quality, nature or kind that it could have a substantial and improper influence on the public official or employee" with respect to that person's duties.⁴ The Commission has explained that it is unnecessary that the thing of value actually influences the official or employee provided that it is of such a character that it could have a substantial and improper influence upon him or her.⁵ The Commission has determined that a "thing of value" will have a substantial and improper influence on a public official or employee if it could impair his or her objectivity and independence of judgment with respect to the person's 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 official or employee serves.⁶

The Ethics Commission has identified some items that are clearly of substantial value, such as a season ticket for a professional sporting event; travel, meal, and lodging expenses; discounts on furniture and major appliances; frequent flyer benefits accrued in connection with public travel; a month of free parking or free gasoline; and a monthly public transit pass for commuters.⁷

The Commission has also generally found that some items are nominal or de minimis in value and will not have a substantial influence on a public official or employee.⁸ The Commission has determined that a public official or employee is usually not prohibited from accepting a thing of nominal or de minimis value from an improper source.⁹ For example, the Commission has stated that a public official or employee is not prohibited from soliciting or accepting a basic t-shirt or other kind of nominal promotional item provided by a vendor or potential vendor.¹⁰ However, the Commission has cautioned that de minimis or nominal items or expenses could have a substantial influence on a public official or employee if they are given repeatedly and reach a substantial cumulative value.¹¹

Ascertaining the Value of a Gift

In Advisory Opinion No. 96-003, the Commission determined that for purposes of the financial disclosure reporting requirement of R.C. 102.02(A)(2)(g),¹² a public official or employee has the burden of determining the value of a gift, and must in good faith value the gift at or above its minimum fair market value, which is the lowest price at which he or she could have purchased a comparable benefit in the same geographical area within the same period of time.

The application of R.C. 102.03(D) and (E) is dependent upon the facts and circumstances of each individual situation.¹³

An unsolicited, ceremonial gift given to a public official or employee that has little intrinsic, marketable, or utilitarian value and is intended for presentation, such as a personalized plaque, picture, framed certificate, trophy, or similar item is generally not a thing of a substantial value.¹⁴ While this type of a ceremonial gift can be desirable to a public official or employee for its sentimental value, it is not a valuable thing or benefit that is of such a character as to have a substantial and improper influence on the official or employee in the performance of his or her public duties.¹⁵ Therefore, a public official is not prohibited from accepting these types of ceremonial gifts.

However, some ceremonial gifts would not come under this exemption even if they are unsolicited and personalized. Examples would include a plaque, picture, or trophy that: has general desirability or marketability as a valuable object of art or a collectible item; has significant utilitarian value; or incorporates materials of significant value, such as precious metals or gems. Under these circumstances, even though the item is intended as a ceremonial gift, it would be a valuable thing or benefit that is of such a character as to improperly influence the official or employee in the performance of his or her public duties.¹⁶

For instance, a public official is not prohibited from accepting a simple, personalized plaque in recognition of his or her voluntary service to a professional organization whose members are regulated by his or her public agency. However, the public official would be prohibited from accepting the gift if the plaque was itself a valuable sculpture created by a local artist or if it was constructed of precious metals.

Supplemental Compensation

R.C. 2921.43(A)(1), provides that no public servant shall knowingly solicit or accept, and no person shall give a public servant:

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.¹⁷

The term "public servant" is defined to include any elected or appointed officer, employee, or agent of the state or any political subdivision.¹⁸

The word "compensation" is not defined in R.C. 2921.43.¹⁹ The Ethics Commission has explained that "compensation" refers to wages, remuneration, and payment for services provided in exchange for an act that is clearly within the performance of the public servant's official duties.²⁰ As the Jackson County Court of Common Pleas explained in *State v. Livesay* (1998), 91 Ohio Misc. 2d 208 at 214:

"Compensation" generally means an exchange in return for or to require some obligation, tit for tat, so to speak. The legislature could have used the phrase "anything of value" or "payment," but chose the word "compensation" to require . . . that there be an exchange, i.e., one person gets something from another. (Emphasis added).

"Compensation" also includes the payment of a public servant's expenses incurred in the performance of a public servant's official duties.²¹ For example, the Ethics Commission has explained that a public employee is prohibited from accepting the reimbursement of expenses for travel, meals, and lodging from any entity if the expenses are paid in connection with the performance of his official duties.²²

The Ethics Commission has explained that a public servant cannot solicit or accept, and persons cannot give to a public servant, "compensation" that is intended to be given in exchange for any of the following purposes: (1) to perform his or her official duties; (2) to perform any other act or service in his or her public capacity; or (3) as a supplement to his or her public compensation.

For example, a victim advocate employed by a county agency is prohibited from accepting a monetary award from a local community association for the work he or she does with victims of crime because the award would be "compensation" other than as allowed by law for the general performance of his or her public duties and as a general supplement to his or her public compensation.²³

However, the community association would not be prohibited from honoring the public employee by providing him or her with a personalized framed certificate that will, as described above, provide only sentimental value to the recipient. Under such circumstances, the ceremonial gift is not considered “compensation” or payment for his or her services as a public servant.

Conclusion

Limited to questions arising under Chapter 102 and Sections 2921.42 and 2921.43 of the Revised Code, it is the opinion of the Commission and the Commission advises that both R.C. 102.03(D) and (E) and R.C. 2921.43(A) prohibit a public official or employee from accepting a ceremonial gift that has significant utilitarian value; is comprised of materials of significant monetary value; or could have general desirability or marketability as an artistic or collectible item if the gift is from a prohibited source and/or given in recognition of his or her public service. However, neither R.C. 102.03(D) and (E) nor R.C. 2921.43(A) prohibit a public official or employee from accepting an unsolicited, purely ceremonial gift that has little intrinsic, marketable, or utilitarian value and is intended for presentation purposes, such as a personalized plaque, picture, framed certificate, trophy, or similar item.



Merom Brachman, Chairman
Ohio Ethics Commission

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

¹ See R.C. 102.01(B) and (C).

² R.C. 1.03; 102.01(G).

³ Ohio Ethics Commission Advisory Opinions No. 2001-03, 2001-04, and 2009-01.

⁴ Adv. Op. No. 76-005 (emphasis in original).

⁵ *Id.*

⁶ Adv. Ops. No. 2001-03 and 2004-03. See also Ohio Sup.Ct. Bd of Professional Conduct, CPR Op. 98-10 (1998) (acceptance of a thing of value by a judge is improper “in the presence of all three variables: (1) a thing of value, (2) substantial influence, and (3) improper influence”).

⁷ Adv. Ops. No. 89-014, 91-010, 92-014, 92-015, and 2001-04. See also Adv. Ops. No. 95-001 (a season ticket for the games of a professional sports team) and 2001-03 (golf outings). Adv. Op. No. 96-003 (in these instances, whenever a public official or employee receives such gifts, he or she enjoys a personal benefit in the form of the substituted value that he or she would otherwise have had to acquire from another, usually commercial, source by paying consideration).

⁸ See Adv. Ops. No. 86-003, 89-014, and 92-015.

⁹ *Id.*

¹⁰ Adv. Op. No. 92-014. See also R.C. 102.03(H) (“Honorarium” does not include ceremonial gifts or awards that have insignificant monetary value; unsolicited gifts of nominal value or trivial items of informational value) and JLEC Advisory Opinion No. 96-004.

¹¹ See Adv. Ops. No. 86-003, 89-014, and 92-015. See also Ohio Sup.Ct. Bd of Professional Conduct, CPR Op. 98-10 (1998) (“substantial influence is present if the thing of value is more than de minimis”).

¹² R.C. 102.02(A)(2)(g) states: “Except as otherwise provided in section 102.022 of the Revised Code, the source of each gift of over seventy-five dollars, or of each gift of over twenty-five dollars received by a member of the general assembly from a legislative agent, received by the person in the person’s own name or by any other person for the person’s use or benefit during the preceding calendar year, except gifts received by will or by virtue of section 2105.06 of the Revised Code, or received from spouses, parents, grandparents, children, grandchildren, siblings, nephews, nieces, uncles, aunts, brothers-in-law, sisters-in-law, sons-in-law, daughters-in-law, fathers-in-law, mothers-in-law, or any person to whom the person filing the statement stands in loco parentis, or received by way of distribution from any inter vivos or testamentary trust established by a spouse or by an ancestor.”

¹³ Adv. Ops. No. 87-008, 89-003, 90-004, and 91-002.

¹⁴ See also 5 C.F.R 2635.203(b)(2).

¹⁵ See Adv. Op. No. 76-005 (The Ohio Supreme Court, in *Scott v. State*, 107 Ohio St. 475, 486 (1923), defined “thing of value” as used in a criminal bribery statute by relying on the Webster’s International Dictionary definition of value: “The property or aggregate properties of a thing by which it is rendered useful or desirable.” In the same case the court went on to say that a thing of value need not be generally desirable, but only desirable to the person or persons in question.)

¹⁶ See R.C. 102.03(F) (prohibiting a prohibited source from promising or giving anything of substantial value to a public official or employee). See also Adv. Op. No. 90-001.

¹⁷ There are three specific exceptions to this provision, set forth in R.C. 102.03(G), (H), and (I). The exceptions apply to campaign contributions, honoraria, and travel expenses and are not relevant to the issue of ceremonial gifts.

¹⁸ R.C. 2921.01(A) and (B).

¹⁹ See R.C. 102.01(A) for purposes of Chapter 102 compensation is defined as “money, thing of value, or financial benefit.” See also Adv. Ops. No. 92-014 and 2007-03.

²⁰ See Adv. Op. No. 2008-01. See also R.C. 1.42 (words and phrases shall be read in context and construed according to the rules of grammar and common usage).

²¹ Adv. Op. No. 92-018.

²² *Id.*

²³ See Adv. Op. No. 92-015.