

Merom Brachman, *Chairman*
Megan C. Kelley, *Vice Chair*
Bruce E. Bailey
Julie A. Rutter
Elizabeth E. Tracy
Mark A. Vander Laan



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

INFORMATION SHEET: ADVISORY OPINION NO. 2020-01
PUBLIC SERVANT RECEIVING A BEQUEST

What is the question in the opinion?

May a person bequest a sum of money to two public servants who are employed as city social workers if the bequest is substantially outside of the scope of the public servants' public duties and is not being given in exchange for any services provided by the public servants.

What is the general restriction?

R.C. 2921.43(A)(1) prohibits a person from giving and public servants from accepting supplemental compensation for the performance of the public servants' public duties.

What is the exception and answer in the opinion?

Such a bequest is not prohibited supplemental compensation if: (1) the person who wants to make the bequest does not currently have any particular matters pending before the public servants or their public agency; (2) the bequest is substantially outside the scope of the public servants' public duties; and (3) there is no exchange or a reasonable expectation of an exchange between the person making the bequest and the public servants for performing their public duties.

To whom do the conclusions in this opinion apply?

The conclusions apply to any similarly situated persons and public servants.

When did the conclusions in this opinion become effective?

The opinion became effective upon acceptance by the Ethics Commission.

For More Information, Please Contact:

Paul M. Nick, Executive Director; or
Karen King, Chief Advisory Attorney
614 466-7090

**THIS COVER SHEET IS PROVIDED FOR INFORMATION PURPOSES.
IT IS NOT AN ETHICS COMMISSION ADVISORY OPINION.
ADVISORY OPINION NO. 2020-01 IS ATTACHED.**

Merom Brachman, *Chairman*
Megan C. Kelley, *Vice Chair*
Bruce E. Bailey
Julie A. Rutter
Elizabeth E. Tracy
Mark A. Vander Laan



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

Advisory Opinion
Number 2020-01
January 23, 2020
**Public Servant Receiving a
Bequest**

Syllabus by the Commission:

Division (A)(1) of Section 2921.43 of the Revised Code does not prohibit a public servant from accepting a bequest from an individual's estate if the bequest arises substantially outside the scope of the public servant's duties and there is no exchange or a reasonable expectation of an exchange for the public servant's performance of his or her duties.

* * *

The Ohio Ethics Commission is often asked if a bequest that is provided to a public servant from an individual's estate is considered to be prohibited supplemental compensation for purposes of RC. 2921.43(A)(1).

For example, a person may want to bequest a sum of money to two public servants who are employed by a city as social workers who aid elderly residents in a variety of matters to help them in their day-to-day lives. This person does not currently have any particular matter pending before the public servants or their public agency. The bequest is not intended to be provided in exchange for any specific or general services provided by the public servants.

Bequests—Precedent Established by Advisory Opinion No. 86-003

In Advisory Opinion No. 86-003, the Ethics Commission determined that R.C. 102.03(D) prohibits an employee of the Ohio Veterans Home from: (1) using his official position to secure a designation as an executor, administrator, or beneficiary of a resident's estate or any other thing of value from a resident and, (2) from soliciting or receiving gifts, gratuities, loans, or any other thing of value from a resident.

At the time Advisory Opinion No. 86-003 was rendered, R.C. 102.03(D) prohibited a public official or employee from using or attempting to use his or her official position to secure a thing of value that is of such a character as to manifest a substantial and improper influence upon him or her with respect to his or her duties that "would not ordinarily accrue to him [or her] in the performance of his [or her] official duties." The Ethics Commission addressed the issue of a Veteran's Home employee being a beneficiary in a resident's will, stating:

In the case of the designation of an employee as an executor, administrator, or beneficiary under a resident's will, the value accrues in the future. Also, the employee may not have sought the appointment or bequest and may be unaware that he has been included in the will. **Under such circumstances, the appointment or bequest would not have a substantial and improper influence on the employee in the performance of his official duties.** (Emphasis added).

Even though the Commission did not determine that it was illegal for the employee to receive the bequest, it further advised in Advisory Opinion No. 86-003:

Nevertheless, it would create the appearance of impropriety, since the employees of the Veterans Home may appear to have undue influence upon a resident who makes such decisions concerning a will. Thus, an employee of the Veterans Home should decline designation as an executor, administrator, or beneficiary of a resident's estate, or the receipt of the proceeds of the estate.

Prohibition Imposed by R.C. 2921.43(A)(1)—Supplemental Compensation

After Advisory Opinion No. 86-003 was issued, the General Assembly authorized the Ethics Commission to issue advisory opinions interpreting R.C. 2921.43(A)(1).¹ This law provides that no public servant² shall knowingly solicit or accept, and no person³ shall give to a public servant:

Any compensation, other than as allowed by divisions (G), (H), and (I) of section 102.03 of the Revised Code⁴ 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.⁵

The word "compensation" is not defined in R.C. 2921.43.⁶ 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.⁷

Prior to the Ethics Commission being given advisory authority over R.C. 2921.43, the Office of the Attorney General rendered an advisory opinion explaining R.C. 2921.43, stating:

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. (Citations omitted.)⁸

As explained by the Supreme Court of Ohio, in *Somerset Bank v. Edmund* (1907), 76 Ohio St. 396, 403 and 405:

[I]t is contrary to public policy and sound morals, and a violation of well established legal principles, to permit a public officer to accept an offer of reward for the performance of a service which the law enjoins upon him as a duty. . . .
[B]oth public policy and sound morals forbid that he should be permitted to demand or receive for the performance of a purely legal duty any fee or reward other than that established and allowed by law as compensation for the services rendered.

The Ethics Commission has followed this precedent in its own advisory opinions and has determined that R.C. 2921.43(A)(1) prohibits a public servant from receiving compensation, other than from his or her public agency, if it is promised or given to him or her in exchange for any of the following purposes:

- (a) To perform his or her official duties;
- (b) To perform any other act or service in his or her public capacity; or
- (b) As a supplement to his or her public compensation.⁹

Supplemental Compensation Precedent—Advisory Opinion No. 2008-01

The Ethics Commission has recognized that a person may want to give payments to a public servant for performing services that are within the scope of the public servant’s official duties. For example, in Advisory Opinion No. 2008-01, the Commission was asked if a school district employee, who was compensated by the school district to coach a school sports activity, could accept additional payments from a sports booster group for performing the coaching services.

The Commission determined that the booster group’s additional payments were prohibited supplemental compensation for purposes of R.C. 2921.43(A)(1) because the payments would be made within the scope of the school employee’s duties and in exchange for the coaching services that the district paid its employee to perform.¹⁰ Accordingly, the Commission determined that because the school district is the only lawful source of compensation for a district employee, the district employee can receive only the compensation that the district provides pursuant to the terms of his or her employment contract in exchange for performing his or her assigned coaching service.¹¹

Application of Precedent

The precedent established by Advisory Opinion No. 2008-01 requires that, for a violation to occur, the payments must be made within the scope of the public servant’s public duties and there must be an exchange between the person making the bequest and the public servant for

performing his or her public duties.¹² 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).

In the example given at the beginning of this opinion, unlike the booster group in Advisory Opinion No. 2008-01, the person who wants to bequest a sum of money to the social workers does not currently have any matters pending before the public servants or their public agency and the bequest is not intended to be provided in exchange for their provision of aid to the city’s elderly residents. Because the bequest is substantially outside the scope of the public servants’ public duties and there is no exchange or a reasonable expectation of an exchange between the person making the bequest and the public servants for performing their public duties, the bequest is not considered to be supplemental compensation for purposes of the prohibition imposed by R.C. 2921.43(A)(1).

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 Ohio Ethics Commission, and the Commission advises, that: Division (A)(1) of Section 2921.43 of the Revised Code does not prohibit a public servant from accepting a bequest from an individual’s estate if the bequest arises substantially outside the scope of the public servant’s duties and there is no exchange or a reasonable expectation of an exchange for the public servant’s performance of his or her duties.



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 Am. Sub. H.B. 300, 116th Gen. A. (1986) (eff. September 17, 1986).

² R.C. 2921.01(B); *See generally* Ohio Ethics Commission Advisory Opinion No. 96-005.

³ R.C. 1.59 (The term “person” is defined to include any individual, corporation, partnership, association, or other similar entity).

⁴ R.C. 102.03(G), (H), and (I) provide exceptions for campaign contributions, honoraria, and travel expenses under specified circumstances.

⁵ *Compare* R.C. 102.03(D) (The prohibition imposed by R.C. 2921.43(A)(1) is not qualified or limited by either the source or the nature of the prohibited compensation but prohibits a public servant from accepting improper

compensation even if he or she has not used the authority or influence of his or her public position to secure it). *See also* Adv. Op. No. 2008-01.

⁶ *See* R.C. 102.01(A) for purposes of R.C. Chapter 102., compensation is defined as “money, thing of value, or financial benefit.” *See also* Adv. Ops. No. 92-014 and 2007-03.

⁷ *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).

⁸ 1984 Ohio Atty.Gen.Ops. No. 84-019.

⁹ *See* Adv. Ops. No. 89-012 (supplemental payment for legal services required to be performed by a law director); 90-001 (travel, meal, and lodging expenses provided by a vendor to view the vendor’s facilities); 91-010 (frequent flyer benefits earned through travel on state business); and 92-015 (a retail discount provided to members of a city police department in recognition for the performance of their public duties).

¹⁰ *See also* Adv. Op. No. 92-015 (R.C. 2921.43(A) prohibits a retailer from giving discounts to city police officers as a community service acknowledgement).

¹¹ *See generally* R.C. Chapters 3313. and 3319.

¹² *See also* *State v. Capko* (Mar. 29, 1990), 8th Dist. No. 56814, at 10 (“The bribery statute prohibits a public servant from receiving money to perform his job duties **‘wrong,’** while R.C. 2921.43(A) prohibits a public servant from receiving money to perform his job duties **‘right.’**” (Emphasis added.))