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INFORMATION SHEET: ADVISORY OPINION NO. 2009-03
TICKETS TO CHARITABLE EVENTS

What are the questions addressed in the opinion?

If a company provides a public official or employee with a ticket to a charitable fundraising dinner, is the public official or employee required to reimburse the company for the ticket? If so, what should the amount of the reimbursement be?

What are the answers in the opinion?

If a company provides a public official or employee with a ticket to a charitable fundraising dinner, the public official or employee can accept the ticket and is not required to reimburse the company for the ticket provided that the meal is of an ordinary character and no other thing of value is provided to the public official or employee.

If the official or employee chooses to reimburse the company, the amount to be reimbursed is the value of the meal rather than the ticket price of the item.

To whom does this opinion apply?

The conclusions in this opinion apply to all individuals who are elected or appointed to, or employed by, any public agency, including but not limited to any state agency, county, city, township, school district, public library, and regional authority, regardless of whether the person is: (1) compensated or uncompensated; (2) serving full time or part time; or (3) serving in a temporary or permanent position.

When did the conclusions in the opinion become effective?

The opinion became effective when rendered by the Commission at its meeting on July 14, 2009.

For More Information, Please Contact:

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ADVISORY OPINION NO. 2009-03 IS ATTACHED.**

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Advisory Opinion
Number 2009-03
July 14, 2009

Syllabus by the Commission:

- (1) Division (E) of Section 102.03 of the Revised Code prohibits a public official from soliciting or accepting anything of value that is of such character as to have a substantial and improper influence on the official with respect to the performance of his or her duties;
- (2) A gift of substantial value from an “improper source” (a person or entity that that is doing or seeking to do business with, interested in matters before, or regulated by the public agency a public official serves) is of such character as to have a substantial and improper influence on the official who receives it;
- (3) R.C. 102.03(E) does not prohibit a public official from accepting a ticket to a charitable fundraising dinner where the meal is of an ordinary and routine character and no other thing of value is provided at the event, even if the ticket is provided by an “improper source”;
- (4) Even though the public official is not prohibited from attending the event, he or she may choose to reimburse the source an amount equal to the value of the meal.

* * * *

The Ohio Ethics Commission has been asked about the application of the Ethics Law when a company that is doing business with a public agency would like to invite an official of the agency to attend a charitable fundraising dinner. The specific question is, if the official wants to attend the event and reimburse the company for the cost of the event, whether the cost of the event is: (1) the ticket price; or (2) the value of the meal and any other thing of value received by the official.

The company often supports charitable organizations by purchasing seats or a table at fundraising lunches and dinners. The company would like to invite an official connected with one of its public sector clients, such as a school administrator or public hospital official, to attend the event as its guest.

These events are described as “no frills” non-exclusive charitable events that are open to any member of the public who is willing to pay for a ticket or a table. The events do not include: (1) speeches by high-ranking political figures or celebrities; (2) golf outings or sporting events; or (3) shows that provide a significant entertainment value.

The typical scenario involves a charitable luncheon where the company purchases a ten-person table for \$1,000. Federal tax law requires the charity to inform purchasers what portion of the table’s cost represents the value of the benefit, goods, or services received (i.e., the meal) at the event. The remainder is available to the purchaser as a tax-deductible charitable donation.

Brief Answer

As explained in this opinion, R.C. 102.03(E) does not prohibit the official from attending the fundraising dinner as the guest of a vendor provided that the only thing provided to the official is a meal of an ordinary and routine character. If the official wants to reimburse the company, he or she can pay the company the value of the meal. To determine the value of the meal, the official should ask the event sponsor what portion of the ticket price is not a tax-deductible charitable contribution.

Soliciting or Accepting Things of Value From a Vendor—R.C. 102.03(E)

R.C. 102.03(E) 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.

“**Public official or employee**” includes any person who is elected or appointed to an office or is an employee of any department, division, institution, board, commission, authority, bureau or other instrumentality of the state, a county, city, village, or township, the five state retirement systems, or any other governmental entity. *See* R.C. 102.01(B) and (C). *See, also*, Ohio Ethics Commission Advisory Opinions No. 2000-04 and 2001-04. All officials and employees of a public hospital, and most officials and employees of public school districts, are “public officials or employees.” (Teachers and other educators who do not perform, or have the authority to perform, administrative or supervisory authority, are not “public officials or employees.”) *See, generally*, Adv. Op. No. 99-002.¹

“**Anything of value**” as defined in R.C. 102.03(G) and 1.03, includes money, gifts, and every other thing of value. A ticket to a charitable fundraising event, as well as dinners, receptions, retreats, cash, gift cards, tickets to sports or entertainment events, and trips are all within the definition of anything of value. Adv. Op. No. 2009-01.

¹ This opinion uses “public official” to refer to both public officials and public employees.

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 could impair the official’s objectivity and independence of judgment with respect to his or her public duties. Adv. Ops. No. 91-010 and 95-001.² It is unnecessary that the thing of value actually has a substantial and improper influence on the official provided that it is of such a character that it could have an influence. *Id.*

A “thing of value” will have a *substantial and improper influence* on a public official if it could impair the official’s or employee’s objectivity and independence of judgment 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 official’s agency. Adv. Ops. No. 2004-03 and 2009-01. *See, also*, Ohio Sup.Ct., Bd Comm’rs on Grievances and Discipline, 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”).

When determining whether a thing of value could have an *improper influence* upon a public official, the focus is primarily upon the *source* of the item. Adv. Op. No. 86-011. If a public official accepts a thing of substantial value from a person or entity that is interested in, regulated by, or contracting with the public agency he or she serves, the thing of value can manifest a substantial and improper influence upon the official by impairing the independence and objectivity of his or her judgment in matters that affect the giver. Adv. Ops. No. 84-010 and 2001-03. These sources are “improper sources.”

When determining whether a thing of value could have a *substantial influence* upon a public official, the focus is primarily on the *nature* of the thing of value. Adv. Op. No. 2001-03. The Commission explained:

[A] thing of value could have a ‘substantial’ influence upon a public official or employee, with respect to the performance of his or her duties . . . if the thing of value is of a ‘substantial’ nature. Adv. Op. No. 86-011. . . . [T]he word ‘substantial’ was commonly used to mean ‘of or having substance, real, actual, true; not imaginary; of considerable worth or value; important.’

An item that is nominal or de minimis in value is not of such a character as to have a substantial influence on a public official, even if it is provided to the official by an improper source. Adv. Op. No. 2001-03.³

² R.C. 102.03(E), the statute under consideration in this opinion, was not enacted until 1986, after Advisory Opinion No. 76-005 was adopted. R.C. 102.03(D) was amended at the same time R.C. 102.03(E) was adopted. However, the phrase “of such a character as to manifest a substantial and improper influence” was not revised in or removed from R.C. 102.03(D), and was used again in R.C. 102.03(E).

³ However, even nominal or de minimis items can have a substantial cumulative value if given over an extended period of time. *Id. See, also*, Adv. Ops. No. 86-003, 89-014, and 92-015.

The Supreme Court of Ohio Board of Commissioners on Grievances and Discipline has reached a similar conclusion. When considering whether R.C. 102.03(D) and (E) prohibit a judge from accepting a gift or other things of value, the Board of Commissioners stated:

There is substantial influence if the thing of value is more than de minimis. There is improper influence if the thing of value is from a party that is interested in matters before, regulated by, or doing or seeking to business with the public official's or employee's agency.

Ohio Sup.Ct., Bd Comm'rs on Grievances and Discipline, CPR Op. 98-010 (1998).

Application to Presented Facts

A vendor to a public agency is an improper source of things of substantial value to officials of the agency. Therefore, before attending a fundraising event as the guest of a vendor, an official must determine whether the nature of the gift is substantial.

The purchaser of a ticket to a charitable event is entitled to take a tax deduction for whatever portion of the purchase price is more than the benefit received. The charitable organization must inform the purchaser which portion of the purchase price is a donation and which portion represents the fair market value of any benefit received.

If the event is a meal, and the organizer provides no other benefit to the individuals who attend the meal, the organizer will be required to tell the purchaser what portion of the ticket price is the fair market value of the meal. If the event includes entertainment of a significant value, such as a golf outing, concert, sporting event, or appearance by a high-profile celebrity speaker or entertainer, the organizer will be required to tell each purchaser what portion of the ticket price is the fair market value of the meal *and* the entertainment.

However, R.C. 102.03(E) does not prohibit a public official from accepting a meal from a "prohibited source" provided that the meal is not extravagant or lavish. Adv. Op. No. 2002-02. As applied to this situation, even though the company providing the ticket is doing business with the public agency, R.C. 102.03(E) does not prohibit an official of the agency from attending the charitable event, and receiving a meal of an ordinary character, as the guest of the company. Given all of the facts and circumstances, the meal is not of such a character as to manifest a substantial and improper influence on the public official.⁴

⁴In addition to the Ethics Law, public officials and employees may be subject to ordinances, rules, policies, or other guidelines governing their public agency that further restrict their acceptance of gifts. For example, Executive Order 2007-01S prohibits state employees from accepting gifts valued at over \$20 from any persons other than family members or close personal friends who are not vendors or grantees of the state.

Even though the official is not prohibited from attending the event as the guest of the company, he or she can choose to pay the firm the value of the meal received. The official can use the fair market value amount communicated by the organizer to determine the amount of the repayment. It is not necessary that the public official or employee pay the entire purchase price of the ticket.⁵

Disclosure of Gifts on a Financial Disclosure Statement—R.C. 102.02

The financial disclosure requirement is set forth in R.C. 102.02(A). All public officials who are required to file financial disclosure statements must disclose the sources of gifts. Most filers are required to report, as the source of a gift, any one who gives the filer a gift, or gifts, whose total value is more than \$75. R.C. 102.02(A)(7). A smaller number of filers, including elected officials who are serving with political subdivisions in positions paid less than \$16,000 a year and university trustees, are required to disclose, as the source of a gift, any one who gives the filer a gift, or gifts, whose total value is more than \$500. R.C. 102.022.

If a public official attends an event as a guest of any person, that person is the source of a gift to the official. If the value of the event exceeds the threshold for disclosure, the official must disclose the source of the gift on his or her financial disclosure statement.

The Ethics Commission has stated that fair market value should be used to determine the value of the gift for purposes of the disclosure requirement. Adv. Op. No. 96-003. A public official 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 general period of time. *Id.*

In the example provided in this opinion, the benefit received by the public official is the meal. The value of the meal can be determined by relying on the organizer of the event, which has an obligation to properly inform ticket purchasers of the fair market value of any benefit they will receive. Because the fair market value of the meal will be less than the amount the company paid for the ticket, the public official receives a gift of the value of the meal, rather than the cost of the ticket, for reporting purposes. If the fair market value of the meal is less than the threshold for disclosure of gift sources, the public official will not have to disclose the organization as the source of a gift.

⁵ The Commission notes that the Joint Legislative Ethics Committee (JLEC) has reached a different conclusion regarding tickets to charitable fundraisers. In JLEC Advisory Opinion No. 00-002, the Committee concluded that, when a member or employee of the General Assembly is given a ticket to a charitable fundraiser by a third party who purchased the ticket, the ticket is a gift and the value of the ticket is the face value.

It is important to note that the issue of disclosure is secondary to the issue of whether the acceptance of a thing of value is proper. A public official must consider whether the acceptance of the thing of value is prohibited by R.C. 102.03(E), as described above, regardless of whether the official is required to file a financial disclosure statement or disclose the specific thing of value. A public official or employee is subject to R.C. 102.03(E) even if he or she is not required to file a financial disclosure statement.

Conclusion

This advisory opinion is based on the facts described in the opinion. 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.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are advised as follows: First, (1) Division (E) of Section 102.03 of the Revised Code prohibits a public official from soliciting or accepting anything of value that is of such as character as to have a substantial and improper influence on the official with respect to the performance of his or her duties. Second, a gift of substantial value from an "improper source" (a person or entity that that is doing or seeking to do business with, interested in matters before, or regulated by the public agency a public official serves) is of such as character as to have a substantial and improper influence on the official who receives it. Next, R.C. 102.03(E) does not prohibit a public official from accepting a ticket to a charitable fundraising dinner where the meal is of an ordinary and routine character and no other thing of value is provided at the event, even if the ticket is provided by an "improper source." Finally, even though the public official is not prohibited from attending the event, he or she may choose to reimburse the source an amount equal to the value of the meal.

By my signature below, I certify that Advisory Opinion No. 2009-03 was rendered by the Ohio Ethics Commission at it meeting on July 14, 2009.



Ben Rose, Chair
Ohio Ethics Commission