



OHIO ETHICS COMMISSION

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Advisory Opinion No. 84-008
May 24, 1984

Syllabus by the Commission:

(1) Division (D) of Section 102.03 of the Revised Code prohibits an employee of a state commission from using his official position to secure a finder's fee or other payments from a manufacturer of a computer service or its agent that sells the system to the commission or other government or private agencies.

(2) Division (A)(1) of Section 2921.42 of the Revised Code prohibits an employee of a state commission from serving as a member of or consultant to a commission task force on computerization or otherwise using the authority or influence of his office to secure authorization of a public contract for computer services in which he or a business associate has an interest.

(3) Division (A)(4) of Section 2921.42 of the Revised Code prohibits an employee of a state commission from having an interest in a computer service contract between the commission and a manufacturer or its agent with whom he is associated in business.

(4) Division (A) of Section 102.04 of the Revised Code prohibits an employee of a state commission from receiving compensation, other than from the commission, for personal services rendered as a consultant on a case, proceeding, application, or other matter before any agency of the state, unless the exemption of Division (D) of Section 102.04 is applicable.

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You asked whether the Ohio Ethics Law and related statutes prohibit an employee of the Rehabilitation Services Commission (hereinafter Commission) who is a subscriber to a computer service designed for rehabilitation professionals from: (1) receiving a "finder's fee" from the manufacturer or its agent if contracts are negotiated with the Commission, any other state agency, or a Commission contract agency; (2) receiving fees or payments from the manufacturer or its agent for training personnel of the Commission, any other state agency, or a Commission contract agency; (3) serving as a vocational consultant on his own time for private practitioners, organizations, or Commission contract agencies; (4) providing testimony or assessment of the computer service to the Commission or any state agency; (5) serving as a member of or consultant to a Commission task force on computerization; (6) using the computer service on his own time and expense for clients he serves in the course of his employment; or (7) sharing his knowledge and expertise at professional conferences and workshops.

You stated, by way of history, that you are employed by the Rehabilitation Services Commission, Bureau of Vocational Rehabilitation (hereinafter Bureau), as coordinator of a vocational evaluation unit. You stated further that you personally subscribe to a computer service designed for vocational rehabilitation professionals and are very enthusiastic about the future of this computer technology for enhancing the delivery of vocational rehabilitation services. You indicated that you have used the service at your own cost in conjunction with your duties at the Commission, and that you have demonstrated the system to the Commission at its request. You also indicated that you have engaged in discussions concerning the service with other government agencies, professional organizations, or interested parties in the field of vocational rehabilitation. In addition, you serve on the Commission task force on computerization, which is evaluating a number of potential computer services for use by the agency. You asked whether the Ohio Ethics Law and related statutes limit your ability to receive a finder's fee or other fees or payments from the manufacturer or its agent, to advocate the system to others, or to use the system for business purposes.

Division (D) of Section 102.03 of the Revised Code provides:

No public official or employee shall use or attempt to use his official position to secure anything of value for himself that would not ordinarily accrue to him in the performance of his official duties, which thing is of such character as to manifest a substantial and improper influence upon him with respect to his duties.

A coordinator of a vocational evaluation unit for the Commission is a "public official or employee" as defined in Division (B) of Section 102.01 of the Revised Code, and a "finder's fee" or other similar payment is within the definition of "anything of value" in Section 1.03 of the Revised Code. Such a fee or payment would not ordinarily accrue to the Commission employee in the performance of his official duties.

Under the facts presented, the coordinator of the vocational evaluation unit began as an enthusiastic subscriber to a computer service that he believed to be beneficial to his work in vocational rehabilitation. At such time, he had no personal, pecuniary interest in advocating computer technology or his particular service to the Commission or other government agencies, professional organizations, or contract agencies in the field of vocational rehabilitation. However, once he becomes associated with a manufacturer or its agent and receives a "finder's fee" or other payment for contracts negotiated or training provided, he develops a personal, pecuniary interest in contracts for the computer service. Such a fee or payment for a contract with the Commission would have a substantial or improper influence upon him with respect to his official duties, particularly with regard to his duties as a member of or consultant to the Commission task force on computerization that is considering alternative systems. Thus, Division (D) of Section 102.03 of the Revised Code prohibits an employee of the Commission from soliciting or receiving finder's fees or other payments from a computer service manufacturer or its agent if he is serving on the Commission's computerization task force. Furthermore, he is prohibited from using his official position with regard to other government or private agencies within his jurisdiction to secure a finder's fee or other payment from a manufacturer of a computer service or its agent.

Division (A) of Section 2921.42 of the Revised Code provides, in pertinent part:

No public official shall knowingly do any of the following:

(1) Authorize, or employ the authority or influence of his office to secure authorization of any public contract in which he, a member of his family, or any of his business associates has an interest;

....

(4) Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which he is connected.

A coordinator of a vocational evaluation unit for the Commission is a "Public official" as defined in Division (A) of Section 2921.01 of the Revised Code. The purchase or acquisition by the Commission or other government agency of a computer service designed for vocational rehabilitation is a "public contract" as defined in Division (E)(1) of Section 2921.42 of the Revised Code. A person who receives a "finder's fee" or any other payment from the manufacturer of a computer service or its agent for a contract negotiated with a government agency for purchase of the system or training of personnel would be "interested" in that public contract. In addition, the manufacturer or its agent would be a "business associate" for purposes of Section 2921.42 of the Revised Code. Thus, Division (A)(1) of Section 2921.42 of the Revised Code would prohibit the Commission employee from using the authority or influence of his office to secure approval of a contract for computer services in which he or a "business associate," the manufacturer or agent, has an interest. Furthermore, he is prohibited from using his official position, authority, or influence to secure authorization of a contract with another governmental agency, a regulated party, or a contract agency doing business with the Commission.

Even if a public official refrains from using his authority or influence improperly, Division (A)(4) of Section 2921.42 of the Revised Code prohibits him from having an interest in a public contract with the governmental entity with which he is connected. At the state level of government, this means that a public official or employee is prohibited from doing business with his own agency. Therefore, the public employee is prohibited from receiving a finder's fee or having any other interest in a public contract with the Commission or the Bureau. This would include any subcontract under a prime contract between the Commission and a contract agency (See: Ohio Ethics Commission Advisory Opinion No. 82-007). However, he is not prohibited from having an interest in a contract with another government agency or any private party, provided that he does not use his official position, authority, or influence to secure authorization of the contract.

Division (A) of Section 102.04 of the Revised Code prohibits a public official or employee from receiving compensation, other than from the agency with which he serves, for personal services rendered in a "case, proceeding, application, or other matter" before any agency of the same entity of government, excluding the courts. Thus, a Commission employee is

prohibited from receiving compensation for personal services rendered in a transaction or other matter involving the Commission, but is not prohibited from selling personal services to private practitioners, organizations, or contract agencies, provided that the personal services are not rendered as part of a case, proceeding, application, or other matter before any state agency. In addition, the Commission employee is not prohibited from rendering personal services for compensation on a matter pending before a state agency other than his own, or selling goods or services to other state agencies, provided that he meets the exemption of Division (D) of Section 102.04 of the Revised Code (See: Advisory Opinion No. 82-006).

Of course, the Ohio Ethics Law and related statutes do not prohibit a coordinator of a vocational evaluation unit for the Commission from using his personal computer at his own expense and on his own time for Bureau clients. In addition, provided that he has no financial interest, he is not prohibited from providing his personal opinion, testimony, or assessment of the vocational computer system to the Commission and other agencies upon their request, or from sharing his knowledge and expertise at professional conferences and workshops. However, once he develops a business relationship with the manufacturer or its agent and has a personal, pecuniary interest in contracts for the sale of the computer system, he is subject to the prohibitions described above.

This advisory opinion is based on the facts presented and is limited to questions arising under Chapter 102. and Section 2921.42 of the Revised Code.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised that: (1) Division (D) of Section 102.03 of the Revised Code prohibits an employee of a state commission from using his official position to secure a finder's fee or other payments from a manufacturer of a computer service or its agent that sells the system to the commission or other government or private agencies; (2) Division (A)(1) of Section 2921.42 of the Revised Code prohibits an employee of a state commission from serving as a member of or consultant to a commission task force on computerization or otherwise using the authority or influence of his office to secure authorization of a public contract for computer services in which he or a business associate has an interest; (3) Division (A)(4) of Section 2921.42 of the Revised Code prohibits an employee of a state commission from having an interest in a computer service contract between the commission and a manufacturer or its agent with whom he is associated in business; and (4) Division (A) of Section 102.04 of the Revised Code prohibits an employee of a state commission from receiving compensation, other than from the commission, for personal services rendered as a consultant on a case, proceeding, application, or other matter before any agency of the state, unless the exemption of Division (D) of Section 102.04 is applicable.


Richard D. Jackson, Chairman
OHIO ETHICS COMMISSION