



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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Advisory Opinion Number 86-011
December 2, 1986

Syllabus by the Commission:

(1) Division (E) of Section 102.03 of the Revised Code prohibits a public official or employee from soliciting or accepting travel, meal, and lodging expenses from a party that is interested in matters before, regulated by, or doing or seeking to do business with the agency with which he serves.

(2) Division (H) of Section 102.03 of the Revised Code does not permit a public official or employee to accept travel, meal, and lodging expenses from a party that is regulated by, doing business with, or seeking to do business with the agency with which he serves.

(3) Division (1) of Section 102.03 of the Revised Code does not permit a public official or employee to accept travel, meal, and lodging expenses from a party that is interested in matters before, regulated by, or doing or seeking to do business with the agency with which he serves.

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You asked whether the Ohio Ethics Law and related statutes would prohibit an officer or employee of the Ohio Environmental Protection Agency from accepting travel, meal, and lodging expenses from: (1) a regulated party for an inspection of a site or facility; or (2) any person for participation in a ceremonial or educational function, such as a ground-breaking, luncheon, or seminar.

You stated, by way of history, that officers and employees of the Ohio Environmental Protection Agency (hereinafter Agency) usually travel on official business at state expense, but there are exceptions. First, you stated that occasionally the urgency, importance, or unusual nature of a particular situation may require direct observation of a particular site or facility, and that state resources to accomplish the inspection may not be available due to equipment, time, or budgetary constraints. For example, an inspection of a site or facility of a regulated party may be required as part of a permit application, a potential or actual enforcement action, or a compliance review. In addition, it may be necessary to observe an in-state or out-of-state site or facility which is similar in design, function, or operation to a site or facility that is the subject of the review. You indicated that regulated parties may offer to pay the travel, meal, and lodging expenses for such inspections. Second, you stated that officers and employees occasionally participate in ceremonial or educational functions, such as a groundbreaking, luncheon, or seminar, and that certain persons, who may or may not be regulated by the Agency, offer travel, meals, and lodging for such events. You asked whether the Ohio Ethics Law and related statutes would prohibit the acceptance of travel and related expenses under any of these circumstances.

Division (E) of Section 102.03 of the Revised Code 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 him with respect to his duties.

An officer or employee of the Agency is a "public official or employee" as defined in Division (B) of Section 102.01 of the Revised Code, since he is a person who is elected or appointed to an office or is an employee of a public agency. Travel, meal, and lodging expenses are within the definition of "anything of value" in Section 1.03 of the Revised Code. Division (E) of Section 102.03 of the Revised Code enacted as part of Am. Sub. H.B. 300 of the 116th General Assembly, which became effective September 17, 1986. Division (E) of Section 102.03 essentially codifies previous Ohio Ethics Commission advisory opinions which held that Division (D) of Section 102.03 of the Revised Code prohibits a public official or employee from soliciting or receiving consulting fees, honoraria, conference registration fees, lodging, travel expenses, or other similar payment or reimbursement from a party that is interested in matters before, regulated by, or doing or seeking to do business with the agency with which the public official or employee serves (See: Ohio Ethics Commission Advisory Opinions No. 79-002, 79-006, 80-004, and 84-010). In these opinions, the Commission concluded that the receipt of travel, lodging, and other similar expenses from an interested, regulated, or contracting party would be of such a character as to manifest a substantial and improper influence upon a public official or employee with respect to his duties. Similarly, Division (E) of Section 102.03 of the Revised Code prohibits an official or employee of the Agency from receiving travel, meal, and lodging expenses for an official inspection of a site or facility, or participation in a ceremonial or educational function, if such expenses are paid by a party that is interested in matters before, regulated by, or doing or seeking to do business with the agency with which he serves.

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

Divisions (D), (E), and (F) of this section do not prohibit a public official or employee from soliciting or accepting or prohibit a person from promising or giving to a public official or employee an honorarium or similar fee for making a personal appearance or speech, or soliciting, accepting, promising, or giving prepayment or reimbursement of travel, meal, and lodging expenses in connection with the personal appearance or speech if either Division (H)(1) or (2) of this section applies:

(1) The public official or employee is required to file a financial disclosure statement under Section 102.02 of the Revised Code covering the time period in which he accepts payment; neither the honorarium or similar fee nor the prepaid or reimbursed expenses are paid by any person or other entity, or any representative or association of such persons or entities, that is regulated by, doing business with, or seeking to do business with the department, division, institution, board, commission, authority, bureau, or other instrumentality of the governmental entity with which the public official or employee serves; and the expenses paid or reimbursed do not exceed the actual costs of items actually furnished;

(2) The honorarium, expenses, or both are paid in recognition of demonstrable business, professional, or esthetic interests of the public official or employee that exist apart from his public office or employment, including, but not limited to, such a demonstrable interest in public speaking and were not paid by any person or other entity, or by any representative or association of such persons or entities, that is regulated by, doing business with, or seeking to do business with the department, division, institution, board, commission, authority, bureau, or other instrumentality of the governmental entity with which the public official or employee serves.

This provision is consistent with Division (E) of Section 102.03 of the Revised Code, since it does not apply if the payment or reimbursement is provided by a party that is regulated by, doing business with, or seeking to do business with the Agency. Under the facts presented, the travel, meal, and lodging expenses in connection with the inspections would be paid by a regulated party, and the expenses in connection with ceremonial functions may be paid by a regulated party. Therefore, Division (H) of Section 102.03 of the Revised Code would not permit an Agency official or employee to accept travel, meal, and lodging expenses from such parties. However, Division (H)(1) of Section 102.03 of the Revised Code would permit the receipt of such expenses for attendance at ceremonial functions or speeches, provided: (1) the officer or employee files a financial disclosure statement; (2) the payment or reimbursement of the expenses are not from a party that is regulated by, doing business with, or seeking to do business with the Agency; and (3) the expenses or reimbursement do not exceed the actual cost of the items actually furnished.

Division (I) of Section 102.03 of the Revised Code provides, in pertinent part:

A public official or employee may accept travel, meals, and lodging or expenses or reimbursement of expenses for travel, meals, and lodging in connection with conferences, seminars, and similar events related to his official duties if the travel, meals, and lodging expenses or reimbursement is not of such a character as to manifest a substantial and improper influence upon him with respect to his duties....

Once again, this provision is consistent with Division (E) of Section 102.03 of the Revised Code. Thus, an Agency official or employee is prohibited from accepting travel, meal, and lodging expenses in connection with a conference, seminar, or similar event related to his official duties, unless the expenses or reimbursement are not of such a character as to manifest a substantial and improper influence upon him with respect to his duties. As described above, the acceptance by a public official or employee of payments or reimbursement of travel, meals, and lodging from a party that is interested in matters before, regulated by, or doing or seeking to do business with the agency with which he serves would be of such a character as to manifest a substantial and improper influence upon him with respect to his duties. Therefore, Division (1) of Section 102.03 of the Revised Code does not permit an Agency official or employee to accept travel, meal, and lodging expenses from such parties.

Divisions (E) and (I) of Section 102.03 of the Revised Code provide that the thing of value must be of such a character as to manifest a "substantial" and "improper" influence upon the public official or employee with respect to his duties. This depends on the facts and

circumstances of the particular case. With respect to the question of propriety, the focus is primarily on the source of the thing of value. Whether the gift is "substantial" depends on the nature of the thing of value. In general, a meal in a company cafeteria in the course of an inspection of a plant or facility, or a meal provided to a public official or employee in conjunction with a speech given before a regulated party or industry would not be of such a character as to manifest a substantial and improper influence upon that official or employee. Similarly, a necessary auto or helicopter tour of a plant or facility in the course of an inspector's official duties would not, in general, constitute a substantial and improper influence. However, the receipt of travel, meal, and lodging expenses in excess of such essential and direct support would be prohibited by Division (E) of Section 102.03 of the Revised Code.

This advisory opinion is based on the facts presented and is limited to questions arising under Chapter 102., Section 2921.42, and Section 2921.43 of the Revised Code.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that: (1) Division (E) of Section 102.03 of the Revised Code prohibits a public official or employee from soliciting or accepting travel, meal, and lodging expenses from a party that is interested in matters before, regulated by, doing or seeking to do business with the agency with which he serves; (2) Division (H) of Section 102.03 of the Revised Code does not permit a public official or employee to accept travel, meal, and lodging expenses from a party that is regulated by, doing business with, or seeking to do business with the agency with which he serves; and (3) Division (1) of Section 102.03 of the Revised Code does not permit a public official or employee to accept travel, meal, and lodging expenses from a party that is interested in matters before, regulated by, or doing or seeking to do business with the agency with which he serves.


Merom Brachman, Chairman
Ohio Ethics Commission