



OHIO ETHICS COMMISSION

THE ATLAS BUILDING 1200
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Advisory Opinion Number 87-005
June 25, 1987

Syllabus by the Commission:

(1) Division (E) of Section 102.03 of the Revised Code does not prohibit a public agency from soliciting or accepting from a regulated party travel, lodging, and meal expenses which the agency is statutorily authorized to charge for the cost of inspecting or examining such party;

(2) Division (F) of Section 102.03 of the Revised Code does not prohibit a party from promising or giving to a public agency that regulates such party travel, meal, and lodging expenses which the public agency is statutorily authorized to charge for the cost of inspecting or examining such party.

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You asked whether the Ohio Ethics Laws and related statutes prohibit the payment of expenses for investigations conducted by the Division of Consumer Finance pursuant to Section 1321.53 of the Revised Code.

By way of background, Section 1321-52 of the Revised Code provides that no person may act as a second mortgage lender without obtaining a certificate of registration from the Division of Consumer Finance, within the Department of Commerce. Section 1321.53 sets forth the procedure which lenders must follow in making application for a certificate of registration. This section provides that the Division must, prior to the issuance of a certificate, investigate certain relevant facts regarding applicants, and further states:

If the application involves investigation outside this state, the applicant may be required by the division to advance sufficient funds to pay any of the actual expenses of such investigation, when it appears that these expenses will exceed two hundred dollars. An itemized statement of any such expenses which the applicant is required to pay shall be furnished the applicant by the division. No certificate shall be issued unless such fees have been submitted to the division ...

You state that, pursuant to this provision, the Division requires applicants to pay the cost of examiners' meals, transportation, and lodging, and you wish to know whether such payments violate the Ohio Ethics Law.

Divisions (E) and (F) of Section 102.03 of the Revised Code provide as follows:

(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 him with respect to his duties.

(F) No person shall promise or give to a public official or employee anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties.

The term "public official or employee" is defined for purposes of Section 102.03 to include any person who is appointed to an office, or is an employee of, any department or division of the state. See R.C. 102.01 (B) and (C). The Department of Commerce is an administrative department created within state government, see R.C. 121.02(B), 121.08, and includes the Division of Consumer Finance, see R.C. 121.08. Thus, officers and employees within the Division are "public officials or employees" who are subject to the prohibitions of R.C. 102.03.

In Ohio Ethics Commission Advisory Opinion No. 86-011, the Commission concluded that travel, meal, and lodging expenses fall within the meaning of "anything of value," as that term is used in Section 102.03, and that the receipt of travel, meal, and lodging expenses from a party who is interested in, regulated by, or doing or seeking to do business with a public official or employee's agency would be of such a character as to manifest a substantial and improper influence upon a public official or employee with regard to his duties. The Commission concluded, consequently, that Division (E) of Section 102.03 prohibits a public official or employee from receiving travel, meal, and lodging expenses for official inspections or participation in ceremonial or educational functions, 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. Furthermore, Division (F) of Section 102.03 prohibits parties who are interested in matters before, regulated by, or doing or seeking to do business with, a public agency from promising or giving travel, meal, and lodging expenses to an official or employee of that agency.

In this instance, a second mortgage lender may not conduct business without the issuance of a certificate of registration by the Division of Consumer Finance. The Division must investigate relevant facts concerning the applicant, and may only issue a certificate upon certain findings specified in Section 1321.53. It is apparent that second mortgage lenders are parties who are regulated by the Division of Consumer Finance.

In this instance, however, R.C. 1321.53 authorizes the Division of Consumer Finance to require second mortgage lenders to pay the Division expenses incurred in conducting investigations outside the state when it appears expenses will exceed two hundred dollars. Expenses are paid to the agency itself, rather than to a specific public official or employee. An itemized list of expenses must be provided by the Division to the lender. Presumably, such an itemization requires full disclosure of all expenses incurred by the Division for the lender's review. R.C. 102.03(E) does not prohibit a public agency from soliciting or accepting travel, meal, and lodging expenses which may be charged to a regulated party pursuant to statute.

Further, Division (F) does not prohibit a regulated party from promising or giving such expenses to a public agency.

This advisory opinion is based on the facts presented, and 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 so advised, that:
(1) Division (E) of Section 102.03 of the Revised Code does not prohibit a public agency from soliciting or accepting from a regulated party travel, lodging, and meal expenses which the agency is statutorily authorized to charge for the cost of inspecting or examining such party; and
(2) Division (F) of Section 102.03 of the Revised Code does not prohibit a party from promising or giving to a public agency that regulates such party travel, meal, and lodging expenses which the public agency is statutorily authorized to charge for the cost of inspecting or examining such party.


Ohio Ethics Commission
Merom Braehman, Chairman