



OHIO ETHICS COMMISSION

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Advisory Opinion Number 92-014
August 14, 1992

Syllabus by the Commission:

(1) Divisions (D) and (E) of Section 102.03 of the Revised Code do not generally prohibit a public official or employee from accepting an incentive to encourage commuter ridesharing, furnished by his employer from the proceeds of a grant made to the employer by a regional planning commission, except in those instances where the official or employee has specific duties relative to the grant, or where the regional planning commission is interested in matters before, regulated by, or doing or seeking to do business with, the governmental agency with which the official or employee serves;

(2) Division (A) of Section 2921.43 of the Revised Code does not prohibit a public servant from accepting an incentive to encourage commuter ridesharing, furnished by his employer from the proceeds of a grant made to the employer by a regional planning commission;

(3) Due to the exemption provided in Section 713.21 of the Revised Code, a representative of a regional planning commission is not prohibited by Divisions (A)(4) and (A)(3) of Section 2921.42 of the Revised Code from serving as an officer of a governmental agency, or as a member of a planning commission of a city, village, or county, which has received a grant from the regional planning commission; however, a regional planning commission representative who is an employee of a governmental agency, or who serves with a private organization, is subject to the prohibitions of Divisions (A)(4) and (A)(3) of Section 2921.42 of the Revised Code and may be prohibited thereby from serving with an organization which has received a grant from the regional planning commission;

(4) Division (A)(1) of Section 2921.42 and Division (D) of Section 102.03 of the Revised Code prohibit a representative of a regional planning commission from discussing, deliberating, voting, or otherwise using the authority or influence of his position on the planning commission, either formally or informally, to secure any grant payments from the regional planning commission to the other governmental entity or private organization he serves as an officer, trustee or other board member, stockholder, owner, or employee.

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You have asked if the Ohio Ethics Law and related statutes prohibit public employees who work in the downtown area from accepting rideshare incentives purchased with grant money provided by the Mid-Ohio Regional Planning Commission to their employers.

By way of history, you have explained that the Mid-Ohio Regional Planning Commission is a voluntary association of local governments in Ohio. The Mid-Ohio Regional Planning Commission (MORPC) consists of Franklin and Ross counties, Jefferson and Norwich townships, and a number of municipalities in central Ohio. Regional planning commissions, like MORPC, are established and operated pursuant to Section 713.21 of the Ohio Revised Code. MORPC is also a federally designated Metropolitan Planning Organization under the Code of Federal Regulations, and provides a forum in which local governments participate in the development of transportation plans for the region. See 23 CFR 450.106. You have explained that, for the past ten years, MORPC has offered a free service to assist commuters living or working in Franklin County to form and take advantage of existing "ridesharing" opportunities. "Ridesharing" includes car pools, van pools, and public transit. The service offered by MORPC covers ten counties. You have explained that ridesharing programs, such as the one offered by MORPC, are operated under a contract with the Ohio Department of Transportation (ODOT) and funded by the Federal Highway Administration (FHWA).

You have explained that MORPC is considering a new program, Rideshare Incentives for Downtown Employees (RIDE), for employers to provide ridesharing incentives to employees with the goal of increasing, encouraging, and promoting ridesharing. MORPC will make grants to the employers in order that the employers may provide the rideshare incentives. The RIDE program will also be funded by FHWA funds and operated under a contract with ODOT. See generally R.C. 713.21. You have explained that ODOT and FHWA have stipulated that RIDE is an appropriate use of federal funds so long as it encourages and promotes ridesharing. You have also explained that an employer must apply to participate in the program, and, if accepted, must supply MORPC with the number of employees who already rideshare. Employers must then attend training sessions with MORPC, VanOhio, and the Central Ohio Transit Authority, to receive information about carpooling, vanpooling, and public transit. RIDE grants can be used only as direct incentives to employees, and cannot be used for wages, fringe benefits, or printing and posting of materials. Examples of RIDE incentives include tee-shirts, one month of parking or gasoline to the car pool or van pool that wins a quarterly drawing, and a monthly transit pass to the employee who wins a quarterly drawing. Employers must also report, at the end of the year, how the grants were used, and if ridesharing was increased.

You have asked if the Ohio Ethics Law and related statutes would prohibit an employee of a public agency or governmental entity from receiving incentives purchased from RIDE grants made by MORPC to their employing agencies. Several provisions of the Ohio Ethics Law are applicable to your question. First, Divisions (D) and (E) of Section 102.03 of the Revised Code provide:

(D) No public official or employee shall use or authorize the use of the authority or influence of his office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties.

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

The term "public official or employee" is defined, for purposes of these sections, in R.C. 102.01 (B), as any person elected or appointed to any office with, or employed by, any public agency. A "public agency" is defined, in R.C. 102.01 (C), as:

[T]he general assembly, all courts, any department, division, institution, board, commission, authority, bureau or other instrumentality of the state, a county, city, village, township, and the five state retirement systems, or any other governmental entity. "Public agency" does not include a department, division, institution, board, commission, authority, or other instrumentality of the state or a county, municipal corporation, township, or other governmental entity that functions exclusively for cultural, educational, historical, humanitarian, advisory, or research purposes; does not expend more than ten thousand dollars per calendar year, excluding salaries and wages of employees; and whose members are uncompensated.

Therefore, any individual who is elected or appointed to any office of, or employed by, any entity identified as a "public agency," as that term is defined above, is considered a "public official or employee" for purposes of R.C. 102.03 (D) and (E). See generally Ohio Ethics Commission Advisory Opinions No. 87-005, 89-013, and 89-014.

The term "anything of value" is defined, for purposes of R.C. 102.03 (D) and (E), in R.C. 102.01 (G) and 1.03, to include money, goods, interests in realty, and every other thing of value. The Commission has, for example, identified travel, meal, and lodging expenses, "frequent flyer" credits, and other discounts as falling within the definition of "anything of value." See Advisory Opinions No. 84-010, 86-011, 87-005, 87-007, 89-013, 89-014, 90-001, and 91-010. Incentives of the type you have described fall within the definition of "anything of value" for purposes of this section.

A public official or employee is prohibited, by R.C. 102.03 (D) and (E), from accepting, soliciting, or using the authority or influence of his position to secure anything of value, where the thing of value is of such character as to manifest a substantial and improper influence upon him with respect to his official duties. See Advisory Opinions No. 80-007, 85-006, 86-003, 86-007, 88-004, 89-006, and 91-010. In order to determine whether incentives of the type you have described would manifest a substantial influence upon the public officials and employees receiving them, the Commission has stated that the focus of inquiry must be on the "nature of the thing of value." Advisory Opinion No. 86-011. In order to be prohibited under R.C. 102.03 (D) and (E), the Commission has stated that "a thing of value must . . . be of a 'substantial' nature." Advisory Opinion No. 89-014. The Ethics Commission has applied the common usage standard to define the term "substantial," and has determined that, for purposes of R.C. 102.03 (D) and (E), the term means "of or having substance, real, actual, true; not imaginary; of considerable worth or value; important." Advisory Opinion No. 89-014 (quoting Advisory Opinions No. 75-014 and 76-005). Items or expenses which are not of nominal or de minimis value are of

"substantial value." Id. For example, one month of parking or gasoline for a carpool or vanpool or a monthly transit pass are "substantial" things of value.

In Advisory Opinion No. 86-011, the Commission identified some things which are not of "substantial" value for purposes of R.C. 102.03 (D) and (E). For example, the Commission stated that a meal provided to a public official or employee in conjunction with a speech is not generally of substantial value. Some of the incentives you have described are also of nominal or de minimis value. For example, one tee-shirt given to a public official or employee is not a "substantial" thing of value for purposes of R.C. 102.03 (D) and (E). However, the Commission has cautioned that even de minimis or nominal items could have a "substantial" cumulative value if they are extended over time or given repeatedly. See Advisory Opinions No. 86-003 and 89-014.

In order to determine whether those incentives that are of a substantial value will also have an improper influence on the official or employee, the Commission must focus its analysis on the source of the thing of value. See Advisory Opinion No. 86-011. The Ethics Commission has held that Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a public official or employee from accepting, soliciting, or using the authority or influence of his position to secure anything of value or the promise or offer of anything of value from a party that is interested in matters before, doing or seeking to do business with, or regulated by, the agency with which he serves. See Advisory Opinions No. 79-002, 79-006, 80-004, 84-010, 87-006, 87-009, 89-006, 89-013, 89-014, and 91-010. This is true regardless of whether the thing of value is paid directly to the public official or employee, or is paid to the public employer, and then given by the employer to the official or employee. See Advisory Opinion No. 89-013. A thing of value will also be of an improper influence where it could otherwise impair the official's or employee's objectivity and independence of judgment with respect to his official duties. See Advisory Opinions No. 84-009, 89-006, 90-003, 90-008, and 91-010. The application of R.C. 102.03 (D) and (E) is dependent upon the facts and circumstances of each individual situation. See Advisory Opinions No. 87-008, 89-003, and 89-006. Assuming first that MORPC is not regulated by, interested in matters before, or doing or seeking to do business with, the employing agency, the issue is whether a public official's or employee's judgment could be impaired if he accepts an "incentive" purchased with RIDE grant money awarded to his employing agency.

In the situation you have described, MORPC will make RIDE grants directly to the public employer. The employer can use the funds only to provide incentives to encourage employees to participate in the available ridesharing programs. The RIDE grant funds cannot be used to pay employees' wages, compensation, or fringe benefits. The employer does not pay for, and does not own, the benefits involved. By contrast, in Advisory Opinion No. 91-010, the Ethics Commission was asked if state officials and employees were prohibited from using "frequent flyer" benefits earned through state travel for their personal use. The Commission held, in Advisory Opinion No. 91-010, that R.C. 102.03 (D) and (E) prohibit state officials and employees from using any benefits earned through state travel, and owned by the state, for their own personal use. The Commission determined that airline tickets for state travel are purchased by the state agency which is requiring the official or employee to travel and that the state agency compensates its officials and employees for the time spent in state travel. The Commission held, as a result, that any benefits which accrue from travel paid for by a state agency, including

"frequent flyer" benefits, belong to the state agency and that employees of the agency may not benefit personally from business the agency conducts. Again, in this instance, the employer does not pay for or own the incentives, and employees would not benefit from business the agency is conducting.

Also, in this instance, the employee does not become eligible for the benefits because of his public employment. The situation you have described is distinguishable from situations where a public official or employee receives a gift, benefit, or other thing of value by virtue of his position with a particular public agency or because he is a public official or employee. The RIDE grants will be offered to private employers as well as public employers. Furthermore, unlike official travel while conducting public business, an employee's travel to and from work is usually performed in his private capacity. While a public employee is generally paid by his employer for time spent in official travel, a public employee is not compensated for the time involved in his daily commute to and from work. For example, an employer is generally not liable for wrongful or negligent acts of an employee done while on his way to or from work, since acts of an employee before or after work are not acts done in the performance of the employers' business. See Senn v. Lackner, 91 Ohio App. 83 (Montgomery County 1951), aff'd, 157 Ohio St. 206 (1952). Further, a public employee is generally not entitled to workers' compensation benefits for injuries sustained by him when going to or coming from his place of work. See, e.g., Industrial Comm. v. Heil, 123 Ohio St. 604 (1931); Industrial Comm. v. Baker, 127 Ohio St. 345 (1933); Bralley v. Daugherty, 61 Ohio St. 2d 302 (1980). The intent of workers' compensation is to provide compensation to workers and their dependents for death, injuries, or occupational disease "occasioned in the course of such workmen's employment." Ohio Const. Art. II § 35. See also R.C. 4123.01 (C). The Ohio courts have stated that an employee is not generally considered to be acting within the course of his employment when he is commuting, on roads not controlled by his employer, between his home and his workplace. See Bralley v. Daugherty, 61 Ohio St. 2d 302, 304-5 (1980). In fact, the workers' compensation law in Ohio contains a provision which specifically states that any injury sustained by an employee while voluntarily participating in a "ridesharing" arrangement between the employee's work and his place of employment is not considered to have occurred in the course of employment. R.C. 4123.452.

It is clear, from examples in these various areas of law, that commuting to and from a public job is not a part of the public employment, whether the public employee chooses to drive his own vehicle, carpool or vanpool with other individuals, or ride public transit. This is true even when the "ridesharing" arrangement involves a vehicle owned by a state or local agency. See R.C. 1551.25 (a governmental vehicle can be used for ridesharing, so long as the employees involved in the plan pay a fee to defray the costs of insurance and depreciation). In fact, R.C. 1551.25 supports the interpretation that commuting is not part of the employee's public employment, by providing that employees must pay to participate in this ridesharing arrangement, and that no state or local agency may require employees to participate in a ridesharing arrangement, except during an energy emergency when the governor specifically orders that public employees participate in ridesharing arrangements. R.C. 1551.25 (E). Further, R.C. 1551.25 provides that individuals who are not public officials or employees may also participate in ridesharing involving a governmental vehicle, so long as the individuals pay the same fee to defray costs of insurance and depreciation that is required of public officials and

employees. R.C. 1551.25 (B) and (F). Therefore, any "ridesharing" incentive given to an employee, as part of a regional transportation program which encourages employees in the region to participate in ridesharing, would not be a benefit which arises directly from a public employee's public employment, even though the incentive program is administered by the public employer. Such an incentive would not generally be of such a character as to impair the judgment or objectivity of the recipient public official or employee with respect to his official duties.

However, if any official or employee of a recipient public agency is required, as a part of his public employment, to perform duties relative to the RIDE grant (such as distributing incentives or determining which employees are eligible for incentives), the ridesharing incentives paid for with RIDE grant money could impair the objectivity and independence of judgment of these employees, with respect to their duties involving the RIDE grants. Therefore, R.C. 102.03 (D) and (E) would prohibit a public official or employee, with specific duties relative to RIDE grants, from accepting, soliciting, or using the authority or influence of his public position to secure any incentive purchased with RIDE grant money.

Furthermore, as discussed above, R.C. 102.03 (D) and (E) also prohibit a public official or employee from accepting, soliciting, or using the authority or influence of his position to secure anything of value from a party that is interested in matters before, doing or seeking to do business with, or regulated by, the agency with which he serves. See Advisory Opinions No. 79-002, 79-006, 80-004, 84-010, 87-006, 87-009, 89-006, 89-013, 89-014, and 91-010. The party which is the source of the grant money in your question is MORPC, regardless of the fact that the grants are being funded through federal moneys. See generally Advisory Opinion No. 84-011. Therefore, R.C. 102.03 (D) and (E) prohibit any public official or employee from accepting, soliciting, or using the authority or influence of his position to secure incentives paid for with money granted by MORPC if MORPC is interested in matters before, regulated by, or doing or seeking to do business with, his employing agency. See Advisory Opinions No. 89-013 and 89-014. For example, you have explained that MORPC's ridesharing program is administered by MORPC under a contract with ODOT. MORPC is clearly interested in matters before ODOT and is doing business with ODOT. See also R.C. 2921.42 (imposing restrictions relative to public contracts including grants). Therefore, officials and employees of ODOT would be prohibited by R.C. 102.03 (D) and (E) from accepting, soliciting, or using their authority or influence to secure incentives purchased from grant money provided by MORPC. Other public officials and employees may be subject to the restrictions imposed by R.C. 102.03 (D) and (E) if MORPC is a regulated entity, interested party, or vendor or potential vendor of the governmental entity they serve.

Also relevant to your question is Division (A)(1) of Section 2921.43 of the Revised Code which provides:

(A) No public servant shall knowingly solicit or accept and no person shall knowingly promise or give to a public servant . . . the following:

(1) Any compensation, other than as allowed by divisions (G), (H), and (I) of section 102.03 of the Revised Code or other provisions of law, to perform his 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.

The term "public servant" is defined, for purposes of R.C. 2921.43, in R.C. 2921.01 (B), to include:

- (1) Any public official
- (2) Any person performing ad hoc a governmental function, including without limitation a juror, member of a temporary commission, master, arbitrator, advisor, or consultant;
- (3) A candidate for public office, whether or not he is elected or appointed to the office for which he is a candidate.

The term "public official" includes "any elected or appointed officer, or employee, or agent of the state or any political subdivision, whether in a temporary or permanent capacity." See R.C. 2921.01 (A). Therefore, officers and employees of any state agency or political subdivision are considered "public servants" for purposes of R.C. 2921.43 (A). See Advisory Opinions No. 89-012, 89-013, and 89-014.

R.C. 2921.43 prohibits a public servant, including any public employee, from soliciting or accepting any compensation, other than as allowed by R.C. 102.03 (G)-(I) or other provision of law, to perform his official duties or any act in his official, public capacity or to generally perform the duties of his public position. The exceptions set forth in R.C. 102.03 (G) to (I) concern campaign contributions, honoraria, and travel, meal and lodging expenses, which are not at issue in your question. R.C. 2921.43 (A)(1) also prohibits any person from promising or giving to a public servant any prohibited outside compensation.

The word "compensation" is not defined for purposes of R.C. 2921.43. A primary rule of statutory construction is that words used in a statute must be construed according to rules of grammar and common usage. See R.C. 1.42. Furthermore, statutes "must be construed in the light of the mischief they are designed to combat." City of Mentor v. Giordano, 9 Ohio St. 2d 140, 144 (1967). "Compensation" is defined as "payment for services: esp., wages or remuneration." See Webster's New World Dictionary 289 (2nd College Ed. 1972). The Commission has stated that the term "compensation," as used in R.C. 2921.43, includes such things as compensation for legal services, "frequent flyer" benefits earned through public travel, and travel, meal and lodging expenses. See Advisory Opinions No. 89-012, 89-014, and 91-010. In Advisory Opinion No. 89-014, the Ethics Commission was asked if county officials and employees could accept travel, meal, and lodging expenses from a potential county vendor in order to view and evaluate the vendor's product. In that Opinion, the Commission stated:

[N]othing in Divisions (G), (H), or (I) of Section 102.03 allows a public official or employee to accept expenses from a vendor desiring to do business with his agency in order to view and evaluate the vendor's product, an act which is clearly within the performance of the official's or employee's public duties. See Advisory Opinion No. 89-013. Therefore, R.C.

2921.43 (A) prohibits a county officer or employee from accepting travel, meal, and lodging expenses from a company that is doing or seeking to do business with his county department in order to view and evaluate the vendor's product. (Emphasis added.)

Advisory Opinion No. 89-014. The prohibition applies regardless of whether the additional compensation is paid directly to the public official or employee, or is paid to the public employer, and then given by the employer to the official or employee. See Advisory Opinion No. 89-013.

In Advisory Opinion No. 91-010, as discussed above, the Ethics Commission was asked if state officials or employees are prohibited, by R.C. 2921.43, from using "frequent flyer" credits accrued through state travel for their own personal use. The Commission held that, since state officials and employees are compensated, by their state agency, for their travel on behalf of the state, any personal benefit for the state officials or employees which arises from the travel would be additional compensation prohibited by R.C. 2921.43 (A)(1).

In your question, you have explained that, once a RIDE grant has been made to an employer, the employees may receive incentives of various values. The incentives will be provided by the employer, from the RIDE grant proceeds. Since the purpose of the RIDE program is to encourage ridesharing, the incentives will be given to employees who participate in ridesharing. As described above, generally the commute to and from work is not an act which is part of an employee's job duties. RIDE incentives will not be given for the performance of an employee's official duties, for the performance of any act or service within the employee's public capacity, or for the general performance of the duties of the public servant's public employment. The RIDE grants will be given to private, as well as public, employers. Therefore, a public servant is not prohibited, by R.C. 2921.43 (A), from receiving ridesharing incentives furnished by his employer from the proceeds of a RIDE grant, so long as those incentives are awarded only to encourage ridesharing, a non-job-related activity.

The conclusions holding that R.C. 102.03 and 2921.43 do not prohibit incentives in this instance do not mean that a public official or employee may accept a gift or benefit offered to him by virtue of his position with a particular public agency or because he is a public official or employee. A public official or employee is prohibited, by R.C. 102.03 (D) and (E), from accepting, soliciting, or using his authority to secure, anything of value from parties that are regulated by, interested in matters before, or doing or seeking to do business with, the agency he serves, or where the thing of value could impair his impartiality and independence of judgment with respect to his official duties. He is also prohibited, by R.C. 2921.43 (A)(1), from accepting any compensation other than as allowed by law. A public official or employee is subject to these prohibitions regardless of whether the thing of value or compensation relates specifically to the performance of his official duties or is given to the official or employee merely by virtue of his public position.

You should also be aware of provisions of the Ethics Law which may apply to individuals who serve on the Mid-Ohio Regional Planning Commission. Individuals who serve on regional planning commissions, including MORPC, are public officials. See Advisory Opinion No. 86-004. See also 1962 Ohio Op. Att'y Gen. No. 2763 and Ohio Op. Att'y Gen. No.

65-69. A public official or employee is prohibited from accepting, soliciting, or using the authority or influence of his position to secure anything of value, including the expenditure of public funds, for himself, or for any other person, if the relationship between the official or employee and the other person is such that his objectivity and independence of judgment could be impaired. R.C. 102.03 (D) and (E). Public officials and employees are prohibited, by the Ohio Ethics Law, from authorizing a public contract in which the official or employee, a member of his family, or any of his business associates has an interest, and from having an interest in a public contract entered into by a governmental entity with which he is connected. R.C. 2921.42 (A)(1) and (A)(4). Public officials and employees are also prohibited from occupying a position of profit in the prosecution of a public contract which is not let by competitive bidding, or is not awarded to the lowest and best bidder. R.C. 2921.42 (A)(3).

A regional planning commission, such as the one in your question, is established pursuant to R.C. 713.21. This section provides as follows:

The planning commission of any municipal corporation or group of municipal corporations, any board of township trustees, and the board of county commissioners of any county in which such municipal corporation or group of municipal corporations is located or of any adjoining county may co-operate in the creation of a regional planning commission, for any region defined as agreed upon by the planning commissions and boards, exclusive of any territory within the limits of a municipal corporation not having a planning commission. After creation of a regional planning commission, school districts, special districts, authorities, and any other units of local government may participate in the regional planning commission, upon such terms as may be agreed upon by the planning commissions and boards.

You have explained that a number of political subdivisions are participants in the Mid-Ohio Regional Planning Commission. The MORPC Articles of Agreement set forth the guiding principles of the Commission. According to the Articles of Agreement for MORPC, "any municipality, board of township trustees, or board of county commissioners representing a local unit of government which is within, contiguous to, or near Franklin County, is eligible for full membership" in MORPC. Other units of government may participate in MORPC as associate members. In order to acquire and retain full membership on MORPC, a prospective participating organization must: (1) formally enter into the Articles of Agreement of the Commission; (2) pay the appropriate participating fees set forth in the agreement; (3) maintain or create, for local planning responsibilities, an appropriate planning organization such as a municipal planning commission; and (4) in the instance of a governmental unit other than a municipality, satisfy such conditions as may be established by MORPC.

Some of the political subdivisions which are members of MORPC are represented by elected or appointed officials or employees of the political subdivisions. See Mid-Ohio Regional Planning Commission Articles of Agreement § II (C)(1) (municipal members), (2) (township members), and (3) (county members). See also R.C. 713.21. However, other representatives who serve on the Commission may be private citizens selected by the political subdivisions they represent. See generally MORPC Articles of Agreement § II (C)(1) and (3). The questions, then, are how the MORPC representatives who also hold public office or employment with the

political subdivisions they represent, and MORPC representatives who do not hold other public positions, affected by provisions of the Ohio Ethics Law. The opinion will first examine MORPC representatives who serve in other public positions, and then examine MORPC representatives who are connected with private organizations.

MORPC REPRESENTATIVES SERVING IN OTHER PUBLIC POSITIONS

Division (A)(4) of Section 2921.42 provides that no public official or employee shall have an interest in the profits or benefits of a public contract entered into by or for the use of the governmental agency with which he is connected. A representative of a regional planning commission is a public official for purposes of R.C. 2921.42. See Advisory Opinion No. 86-004. A prohibited "interest" must be definite and direct, and may be either pecuniary or fiduciary in nature. See Advisory Opinion No. 81-008.

The term "public contract" is defined to include the purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of the State or a political subdivision, or any agency or instrumentality of either. See R.C. 2921.42 (E). Grants by governmental agencies, including grants which are awarded through a governmental agency and funded by federal or other moneys, are considered "public contracts" since a grant is the purchase or acquisition of services by or for the use of the governmental agency. See Advisory Opinions No. 82-004, 84-011, and 85-002.

Division (A)(4) of R.C. 2921.42 may prohibit a public official from serving with an agency, including a public agency, that receives grant money from the official's board or commission, if the official serves as an elected or appointed officer or board member of, or in any other fiduciary capacity with, the recipient agency, or if he is an employee of the recipient agency and has an "interest" in the grant. See Advisory Opinions No. 87-003 and 92-002. But see R.C. 2921.42 (C) (providing an exception to R.C. 2921.42 (A)(4)). The Ethics Commission has stated that R.C. 2921.42 (A)(4) may prohibit individuals who serve with governmental entities from serving with public or private bodies that have contracts with or grants from the individual's governmental entity. See Advisory Opinions No. 81-008 and 92-002.

Division (A)(3) of Section 2921.42 provides that a public official shall not knowingly occupy a position of profit in the prosecution of a public contract authorized by him or by a board of which he was a member at the time of authorization, and not let by competitive bidding or let by competitive bidding in which the contract from which he would profit is not the lowest and best bid. R.C. 2921.42 (A)(3) may also prohibit a public official from serving with a public or private body that has received a contract or grant from his governmental entity. See generally Advisory Opinions No. 88-008, 89-006, and 92-002.

However, in the situation you have described, the prohibitions of R.C. 2921.42 (A)(4) and (A)(3) must be examined in light of R.C. 713.21, which provides, in pertinent part:

Any member of a regional planning commission may hold any other public office and may serve as a member of a city, village, and a county planning commission, except as otherwise provided in the charter of any city or village.

It should be noted that the provision of R.C. 713.21 applies only to commission members who hold other public offices, or are members of city, village, or county planning commissions. The exemption in R.C. 713.21 does not apply to commission members who are also public employees. The issue is whether R.C. 713.21 provides an exemption to R.C. 2921.42 (A)(4) and (A)(3) for regional planning commission members who are also officers or members of local planning commissions.

In Advisory Opinion No. 91-001, the Ethics Commission was asked if a township trustee could also serve as a full-time paid employee of a fire company that was under contract with the township to provide fire protection services to the township. The Commission determined that R.C. 2921.42 (A)(4) and 2921.42 (A)(3) prohibit a township trustee from serving as a paid employee of a private fire company which has entered into an unbid contract to provide fire protection to the township where he would be paid from the proceeds of the contract and participate in executing the contract. The Commission also recognized R.C. 511.13, a statute that is not within the jurisdiction of the Commission, which prohibits a township trustee from having an interest in a township contract. See Ohio Op. Att'y Gen. No. 90-037.

After reaching this conclusion, the Commission examined R.C. 505.011, which provides an exemption similar to the one set forth in R.C. 713.21:

A member of a board of township trustees may be appointed as a volunteer fireman and in such capacity be considered an employee of the township, or he may be a member of a private fire company which has entered into an agreement to furnish fire protection for the township of which such member is a trustee; provided that such member shall not receive compensation for his services as a volunteer fireman.

R.C. 505.011 was also examined by the Attorney General, in Attorney General Opinion No. 90-037. The Attorney General held that R.C. 505.011 renders inapplicable the prohibition imposed by R.C. 511.13 against a township trustee having an interest in a contract with his township where the trustee serves as a full-time paid employee of a private fire company. The Ethics Commission reviewed Attorney General Opinion No. 90-037, and stated:

The Attorney General in 1990 Ohio Op. Att'y Gen. No. 90-037 held that the General Assembly enacted R.C. 505.011 to provide a limited exemption to the prohibition of R.C. 511.13 in order to enable township trustees to serve their communities as volunteer firefighters without jeopardizing their trusteeship. Since R.C. 511.13 imposes a broader prohibition than the one imposed by R.C. 2921.42 (A)(4), a holding by this Commission that the exemption provided by R.C. 505.011 does not also apply to the prohibition imposed by R.C. 2921.42 (A)(4), as well as by (A)(3) would be inconsistent and contrary to the General Assembly's legislative policy and intent to enable township trustees to serve their communities as firefighters. Therefore, due to the exemption provided by R.C. 505.011, a township trustee is permitted to serve as a paid employee of a private fire company which is under contract to provide fire protection services to the township which he serves, despite the prohibitions imposed by R.C. 2921.42 (A)(4) and (A)(3).

Advisory Opinion No. 91-001.

A similar analysis applies to the situation you have described. As discussed above, R.C. 2921.42 (A)(4) and (A)(3) may prohibit an official who serves with a governmental agency from also serving with another public body where his governmental agency has awarded a grant to the other public body. However, the exemption in R.C. 713.21 provides that a representative of a regional planning commission "may hold any other public office."

The exemption of R.C. 713.21 was added subsequent to Attorney General Opinion No. 65-69. In that opinion, the Attorney General concluded that, under the law as it existed in 1965, the position of representative of a regional planning commission was incompatible with the offices of trustee in a township served by the planning commission, commissioner in a county served by the planning commission, and planning commission member in a municipality served by the planning commission. The Attorney General stated, with regard to a township trustee or a county commissioner serving on a regional planning commission:

In order to fulfill both offices, he will be required to act in a legislative capacity at both ends of the spectrum. . . . [A] township trustee or county commissioner will certainly be required to pass upon plans and recommendations as an incident of his office. Thereafter, the same individual may be required to pass upon these same issues as a member of a regional planning commission; in that event an examination of the same issues would have to be made in a different light.

Ohio Op. Att'y Gen. No. 65-69. With regard to the city planning commission member, the Attorney General stated that the legislature intended local planning commissions to act as a check on the actions of a regional planning commission, and therefore, that one individual could not serve in both positions. Id.

After R.C. 713.21 was amended, as set forth above, the Attorney General issued Attorney General Opinion No. 77-034 interpreting this provision. The Attorney General stated:

This amendment, therefore, negated the conclusion reached in 1965 Op. Att'y Gen. No. 65-69, dated April 23, 1965. Thus, it was the manifest intent of the General Assembly that despite any conclusion of incompatibility arising from the common law analysis, a member of a regional planning commission may also hold any other public office or any of the other positions enumerated in [R.C. 713.21]. This statutory provision would appear to reflect a policy of encouraging intergovernmental cooperation. Ohio Op. Att'y Gen. No. 77-034.

The General Assembly has specifically provided, in R.C. 713.21, that public officers are not prohibited from also serving as representatives of regional planning commissions. This legislative enactment was an apparent response to an Attorney General's opinion which determined that the positions of township trustee, county commissioner, and member of city planning commission are all incompatible with representative of regional planning commission. It would be inconsistent with the General Assembly's intent, as stated in Attorney General Opinion No. 77-034, of encouraging intergovernmental cooperation, for the Ethics Commission to conclude that R.C. 2921.42 (A)(4) and (A)(3) prohibit representatives of a regional planning commission from serving as officers of other governmental agencies, even though there may be public contracts between the regional planning commission and the other governmental agencies.

Therefore, due to the exemption in R.C. 713.21, a MORPC representative is not prohibited from serving as a public officer of a governmental agency receiving a RIDE grant, or as a member of a planning commission in a village, city, or county receiving a RIDE grant, regardless of the prohibitions of R.C. 2921.42 (A)(4) and (A)(3). Once again, it should be noted that the exemption in R.C. 713.21 does not apply to public employees. Employees are considered to have an interest in or profit from the contracts of their employers in certain limited situations. See Advisory Opinions No. 78-006, 82-003, 84-009, 85-008, 87-004, 89-006, and 92-002 (setting forth the circumstances under which an employee has a prohibited interest in or profits from a public contract between his employer and the governmental agency he serves).

The exemption in R.C. 713.21 allows public officers and members of city, village, or county planning commissions to serve as regional planning commission representatives despite the fact that the regional planning commission may have awarded a grant to the governmental agency they serve. However, R.C. 713.21 does not allow public officers and members of local planning commissions to participate in matters before the planning commission affecting the other governmental agency he serves. See Advisory Opinions No. 91-001 and 92-008. A MORPC representative who is a board member, planning commission member, or elected or appointed officer or employee of a political subdivision receiving a grant from MORPC, must observe the prohibition of Division (A)(1) of Section 2921.42 of the Revised Code. Division (A)(1) provides that no public official shall knowingly authorize or employ the authority or influence of his office to secure authorization of a public contract in which he, his family members, or his business associates has an interest. This provision would prohibit a MORPC representative from voting upon, discussing, or otherwise using his authority or influence to secure, a grant for the political subdivision with which he is connected. See Advisory Opinions No. 78-006 and 92-008. See also R.C. 102.03 (D) (which prohibits a public official from participating in any matter that directly affects the interests of an agency which he serves in a fiduciary capacity or by which he is employed) and Advisory Opinion No. 88-005.

MORPC REPRESENTATIVES CONNECTED WITH PRIVATE ORGANIZATIONS

Some of the MORPC representatives are not employed by, or appointed or elected to office with, the political subdivisions they represent. These individuals may be employed by, or serve in other capacities with, various private for-profit or non-profit organizations. As discussed above, Division (A)(4) of Section 2921.42 prohibits a public official from having an "interest" in a contract entered into by a governmental agency with which the official is connected. Individuals who serve on regional planning commissions, including MORPC, are public officials who are subject to the prohibitions of R.C. 2921.42 (A)(4). See Advisory Opinion No. 86-004.

The Commission has held that owners, officers, shareholders, and trustees and other board members of private for-profit or non-profit organizations have an "interest" in the contracts of their organizations. See Advisory Opinions No. 81-005, 81-008, 85-007, 85-009, 86-002, 86-005, 87-003, and 92-008. But see R.C. 2921.42(B). A partner has an interest in the contracts of the partnership. See Advisory Opinion No. 82-007. Under certain circumstances, an employee of a private entity is considered to have an interest in a contract (including a grant) between his employer and the governmental entity with which he is connected. See Advisory Opinions No. 78-006, 82-003, 84-009, 85-008, and 89-006.

Therefore, Division (A)(4) of R.C. 2921.42 prohibits a MORPC official from serving with a corporation or organization that receives a MORPC RIDE grant, if the MORPC official is an owner or stockholder of, or serves as a board member of or in any other fiduciary capacity with, the corporation, or if he is an employee of the corporation and has an "interest" in the grant. But see R.C. 2921.42 (C) (provides a limited exception to R.C. 2921.42).

Division (A)(3) of Section 2921.42 prohibits a public official from occupying a position of profit in the prosecution of a public contract authorized by him or by a board of which he is a member and not let by competitive bidding or not the lowest and best bid. A public contract is considered to be authorized by an official or board if the contract could not have been awarded without the approval of the official or board. See Advisory Opinion No. 88-008. If grants issued by MORPC, allocations made in order to fund RIDE grants, or payments made as a result of grant allocations, must be approved by the MORPC board, MORPC would be considered to have "authorized" the grants issued by the board. It does not appear from the facts that you have provided that the MORPC RIDE grants are granted as a result of competitive bidding.

Therefore, a MORPC representative is prohibited, while on the commission and for one year thereafter, from profiting from a grant which was awarded by MORPC while he was a member thereof. For example, a MORPC representative is prohibited from receiving an incentive purchased with the funds from a RIDE grant. See Advisory Opinions No. 87-004 and 88-008. A MORPC representative is subject to the prohibition of R.C. 2921.42 (A)(3), even though he may have abstained from participating in consideration of the grant from which he would profit. See Advisory Opinion No. 88-008.

The MORPC representatives who serve with private organizations must also observe the prohibitions of Division (A)(1) of Section 2921.42 of the Revised Code, as set forth above. This provision would prohibit a MORPC representative from voting upon, discussing, or otherwise using his authority or influence to secure, grant moneys for a private organization with which he is connected. See also R.C. 2921.42 (C)(4) and Advisory Opinion No. 92-008. The MORPC representative's participation would also be prohibited by R.C. 102.03(D), which prohibits a public official or employee from participating in any matter that directly affects the interests of an organization in which he has an ownership interest or which he serves in a fiduciary capacity, such as a board member, or an organization which is his employer or other business associate. See Advisory Opinion No. 88-005 and 92-008.

This advisory opinion is based on the facts presented. 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 opinion of the Ohio Ethics Commission, and you are so advised, that: (1) Divisions (D) and (E) of Section 102.03 of the Revised Code do not generally prohibit a public official or employee from accepting an incentive to encourage commuter ridesharing, furnished by his employer from the proceeds of a grant made to the employer by a regional planning commission, except in those instances where the official or employee has specific duties relative to the grant, or where the regional planning commission is interested in matters before, regulated by, or doing or seeking to do business with, the governmental agency with which the official or

employee serves; (2) Division (A) of Section 2921.43 of the Revised Code does not prohibit a public servant from accepting an incentive to encourage commuter ridesharing, furnished by his employer from the proceeds of a grant made to the employer by a regional planning commission; (3) Due to the exemption provided in Section 713.21 of the Revised Code, a representative of a regional planning commission is not prohibited by Divisions (A)(4) and (A)(3) of Section 2921.42 of the Revised Code from serving as an officer of a governmental agency, or as a member of a planning commission of a city, village, or county, which has received a grant from the regional planning commission; however, a regional planning commission representative who is an employee of a governmental agency, or who serves with a private organization, is subject to the prohibitions of Divisions (A)(4) and (A)(3) of Section 2921.42 of the Revised Code and may be prohibited thereby from serving with an organization which has received a grant from the regional planning commission; (4) Division (A)(1) of Section 2921.42 and Division (D) of Section 102.03 of the Revised Code prohibit a representative of a regional planning commission from discussing, deliberating, voting, or otherwise using the authority or influence of his position on the planning commission, either formally or informally, to secure any grant payments from the regional planning commission to the other governmental entity or private organization he serves as an officer, trustee or other board member, stockholder, owner, or employee.



Marguerite B. Lehner, Chair
Ohio Ethics Commission