



OHIO ETHICS COMMISSION
THE ATLAS BUILDING
8 EAST LONG STREET, SUITE 1200
COLUMBUS, OHIO 43215-2940
(614) 466-7090

Advisory Opinion Number 92-018
November 20, 1992

Syllabus by the Commission:

(1) Divisions (D) and (E) of Section 102.03 of the Revised Code and Division (A)(1) of Section 2921.43 of the Revised Code prohibit officials and employees of the Division of Oil and Gas of the Ohio Department of Natural Resources from accepting, soliciting, or using their authority or influence to secure passes from the Ohio Oil and Gas Association to attend the Association's meetings without paying a fee;

(2) Division (F) of Section 102.03 of the Revised Code and Division (A)(1) of Section 2921.43 of the Revised Code prohibit the Ohio Oil and Gas Association from giving or promising the Chief of the Division of Oil and Gas of the Ohio Department of Natural Resources free passes enabling Division officials and employees to attend the Association's meetings without paying a fee;

(3) The Ohio Ethics Law does not prohibit officials and employees of the Division of Oil and Gas of the Ohio Department of Natural Resources who, as part of their official duties, provide information by giving presentations and participating in meetings of the Ohio Oil and Gas Association from attending an entire meeting without paying a fee, where the Association does not require any person who gives a presentation at the meeting to pay a fee; however, the officials and employees are prohibited by Divisions (D) and (E) of Section 102.03 of the Revised Code from accepting, soliciting, or using the authority or influence of their position to secure honoraria, or travel, meal and lodging expenses from the Association in connection with their presentations and participation in the meetings.

* * * * *

You have asked whether the Ohio Ethics Law and related statutes prohibit employees of the Division of Oil and Gas (Division) of the Ohio Department of Natural Resources (ODNR) from attending meetings, which are sponsored by the Ohio Oil and Gas Association (Association), without paying a fee.

The Association is comprised of oil and gas producers, drillers, and other parties involved in activities related to the oil and gas industry. The Association holds semi-annual meetings during which information of concern to the oil and gas industry is disseminated. The Association requires that its members and interested parties pay a fee in order to attend its meetings; however, the Association does not require that persons who give presentations at its meetings

pay a fee. The Association regularly invites Division employees to attend these meetings in order to give presentations and provide information on matters of concern to the oil and gas industry.

You ask whether Division employees may attend the Association's meetings without paying a fee, by either: (1) using a free pass provided by the Association; or (2) accepting an invitation to provide information, making a presentation, and staying for the rest of the meeting. The two methods by which Division employees would be able to attend the Association's meetings without paying a fee raise different concerns under the Ethics Laws and must be addressed separately. The Association's proffering free passes will be addressed first.

You state that the Association would give the Chief of the Division of Oil and Gas a limited number of passes enabling the holders to attend the Association's meetings without paying a fee. The Chief of the Division would distribute these passes to Division employees who are not giving presentations, thus enabling these employees to attend the meetings without paying a fee. The issue becomes whether the Ohio Ethics Law and related statutes prohibit Division employees from attending the Association's meetings without paying a fee by using a free pass provided by the Association.

The Division of Oil and Gas is a statutorily created Division within the Ohio Department of Natural Resources (ODNR). See R.C. 1501.01. The Division is charged with the statutory duty to administer, implement, and aid in the enforcement of R.C. Chapter 1509. which imposes statutory requirements upon persons within the State who engage in oil and gas production and drilling, and activities related to the oil and gas industry. See generally R.C. 1509.03. The Chief of the Division of Oil and Gas is responsible for the administration, implementation, and enforcement of R.C. Chapter 1509. and rules promulgated to achieve that purpose. See R.C. 1509.03. Civil or criminal penalties may be imposed upon a party which violates statutory requirements set forth in Chapter 1509. and rules adopted by the Division. See R.C. R.C. 1509.33 and 1509.99, respectively.

Your attention is first directed to Divisions (D), (E), and (F) of R.C. Section 102.03, which 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 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 "anything of value" is defined for purposes of R.C. 102.03 in R.C. 1.03 to include money and every other thing of value. See R.C. 1.03, 102.01 (G). A conference registration fee is a thing of value for purposes of R.C. 102.03 (D), (E), and (F). See Ohio Ethics Commission Advisory Opinion No. 80-004. See also Advisory Opinions No. 79-006 and 84-010 (honoraria, travel, meal, and lodging expenses, and other similar payments and reimbursements constitute things of value for purposes of R.C. 102.03). In the instant situation, the passes which the Association gives to the Chief of the Division enabling the holders to attend the Association's meetings without paying a fee are a thing of value for purposes of R.C. 102.03 (D), (E), and (F).

The term "public official or employee" is defined for purposes of R.C. 102.03 as any officer or employee of a public agency. See R.C. 102.01 (B) and (C). The term "public agency" is defined to include any department or division of the state. See R.C. 102.01 (C). ODNR is a statutorily created department within state government, and the Division of Oil and Gas is a division of ODNR. See R.C. 121.02 (F) and R.C. 1509.02. Therefore, officials and employees of the Division are "public officials or employees" for purposes of R.C. 102.03. See Advisory Opinion No. 84-007. Divisions (D) and (E) of Section 102.03 prohibit a public official or employee from accepting, soliciting, or using his position to secure anything of value that is of an improper and substantial character. See Advisory Opinion No. 89-014.

The term "person" is defined to include any individual, corporation, partnership, association, or other similar entity. See R.C. 1.59. Therefore, the Ohio Oil and Gas Association is a "person" who is subject to the prohibitions of R.C. 102.03 (F) against any person promising or giving to a public official or employee anything of value that is of an improper and substantial character.

In order to determine whether the prohibitions of R.C. 102.03 apply to any given situation, it is necessary to examine the source and nature of the thing of value. In Advisory Opinion No. 86-011, the Ethics Commission held:

With respect to the question of propriety, the focus is on the source of the thing of value. Whether the gift is substantial depends on the nature of the thing of value.

See also Advisory Opinions No. 89-014, 90-001, and 92-014.

With respect to the nature of the thing of value, the Ethics Commission has consistently held that a definite and particular pecuniary benefit which is not nominal or de minimis is considered to be "substantial" for purposes of R.C. 102.03 (D), (E), and (F). See Advisory Opinion No. 92-015. See also Advisory Opinions No. 89-014, 90-001, and 92-014. The Commission has determined that, for purposes of R.C. 102.03, the word "substantial" 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). Cf. Advisory Opinions No. 86-011 (a meal provided to a public official or employee in conjunction with a speech is not generally of substantial value) and 92-014 (one tee-shirt given to a public official or employee by a regional transit authority as an incentive to encourage commuter ridesharing is not a substantial thing of value). However, the Commission has warned that a number of nominal or de minimis items could have a substantial cumulative value. See Advisory

Opinions No. 86-003, 89-014, 92-014, and 92-015. For purposes of Division (F), the sum of the items which a person provides to a group of public officials or employees within a public agency, either at once or over a period of time, will determine whether there is a substantial cumulative value. See Advisory Opinion No. 92-015.

With respect to the source of the thing of value, the Ethics Commission has consistently held that R.C. 102.03 (D) and (E) prohibit a public official or employee from accepting, soliciting, or using the authority or influence of his office or employment 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. In Advisory Opinion No. 80-004 the Commission held that R.C. 102.03 prohibits a member of a state licensing board from accepting the payment of a registration fee and lodging for his attendance at a conference sponsored by a professional association whose members are regulated by the board. See also Advisory Opinions No. 87-006, 87-009, 89-006, 89-013, 89-014, and 91-010. Also, the Commission has held that R.C. 102.03 (F) prohibits a party that is interested in matters before, regulated by, or doing or seeking to do business with, a public agency from promising or giving anything of substantial value to a public official or employee, either directly or indirectly through the official's or employee's public agency. See Advisory Opinions No. 89-013 and 90-001.

As explained above, the members of the Association are oil and gas producers, drillers, and persons who are involved in activities related to the oil and gas industry; therefore, the Association is comprised of persons who are regulated by and interested in matters before the Division; the Association itself is, therefore, interested in matters before the Division. See Advisory Opinions No. 80-004, 85-012, and 90-012. See also Advisory Opinion No. 84-007. Accordingly, R.C. 102.03 (D) and (E) prohibit officials and employees of the Division of Oil and Gas from accepting, soliciting, or using their authority or influence to secure passes from the Association to attend the Association's meetings without paying a fee. See Advisory Opinions No. 80-004 (R.C. 102.03 prohibits a member of a state licensing board from receiving conference registration fees from an association whose members are regulated by the board) and 90-012 (R.C. 102.03 (D) and (E) prohibit a member of a state licensing board from accepting, soliciting, or using the authority or influence of his office to secure anything of value from a professional organization whose members are regulated by the board). Division officials and employees are prohibited from accepting passes provided by the Association even if the passes are given to the Division Chief to distribute to Division employees. See Advisory Opinion No. 89-013 (R.C. 102.03 prohibits a vendor from paying a public official's or employee's expenses even if the expenses are paid as reimbursement to the official's or employee's public agency). See also City of Parma Heights v. Schroeder, 26 Ohio Op. 2d 119, 122 (C.P. Cuyahoga County 1963) (a public official is forbidden from doing indirectly what the law prohibits directly). Also, R.C. 102.03 (F) prohibits the Association from giving or promising the Division Chief free passes to distribute to Division employees since, as explained above, the Association is interested in matters before the Division. See Advisory Opinions No. 87-005, 87-007, 89-002, 89-013, and 90-001. See also Advisory Opinions No. 80-004 and 90-012.

R.C. 102.03 (G), (H), and (I) provide limited exceptions to the prohibitions imposed by R.C. 102.03 (D), (E), and (F). R.C. 102.03 (G) relates to campaign contributions and therefore

does not apply in the instant situation. Division (H) relates to honoraria and fees for making a personal appearance or speech, and travel, meal, and lodging expenses incurred by a public official or employee in connection with making a personal appearance or speech. See Advisory Opinions No. 86-011 and 89-013. Division (I) relates to 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 a public official's or employee's official duties. Id. Divisions (H) and (I) of Section 102.03 read, in pertinent part:

(H) 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 incurred 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 cost of items actually furnished; . . .

(I) 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. (Emphasis added.)

The Ethics Commission has held that the exceptions provided by R.C. 102.03 (H) and (I) do not apply in situations where the source of the honoraria, fees, expenses, or reimbursement is a party that is interested in matters before, regulated by, or doing or seeking to do business with, the official's or employee's public agency. See Advisory Opinions No. 86-011, 89-013, and 89-014. The exemptions provided by Divisions (H) and (I) have been interpreted as being consistent with R.C. 102.03 (D) and (E) which, as described above, prohibit a public official or employee from accepting, soliciting, or using his position to secure anything of value from an interested or regulated party. See Advisory Opinion No. 86-011. Accordingly, R.C. 102.03 (H) and (I) do not exempt a public official or employee from the prohibition against accepting honoraria, fees, expenses, or reimbursement from an interested or regulated party or an association of regulated parties. Id. As explained above, the Association is comprised of persons who are regulated by and interested in matters before the Division, and the Association itself is interested in matters before the Division. Therefore, in this instance, R.C. 102.03 (H) and (I) do not provide an exemption to the prohibitions of R.C. 102.03.

The free passes also implicate the prohibitions imposed by R.C. 2921.43 (A)(1), 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 to include any officer or employee of the state. See R.C. 2921.01 (A) and (B)(1). Thus, an official or employee of the Division is a "public servant" who is subject to the prohibitions of R.C. 2921.43 (A)(1).

The term "person" is defined to include any individual, corporation, partnership, association, or other similar entity. See R.C. 1.59. Therefore, the Association is a "person" who is subject to the prohibitions of R.C. 2921.43 (A)(1).

The word "compensation" is not defined for purposes of R.C. Section 2921.43. In Advisory Opinion No. 92-014, the Ethics Commission held:

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).

See also Advisory Opinion No. 92-015. R.C. 2921.43 (A)(1) prohibits a public servant from accepting or soliciting a pecuniary gain or benefit other than as allowed by R.C. 102.03 (G)-(I) or other provision of law, for performing any duty, act, or service in his official capacity, the general performance of his duties, or as a supplement to his public compensation. See Advisory Opinions No. 89-012 (payment for legal services), 89-013 (travel, meal, and lodging expenses), 91-010 ("frequent flyer" benefits earned through public travel), and 92-015 (a retail discount provided to members of a city police department as a community service acknowledgment and recognition for the performance of their public duties). R.C. 2921.43 (A)(1) also prohibits any person from promising or giving to a public servant a pecuniary gain or benefit other than as allowed by R.C. 102.03 (G)-(I) or other provision of law, for performing any duty, act, or service in his official capacity, for the general performance of his public duties, or as a supplement to his public compensation. See Advisory Opinions No. 90-001 and 92-015. R.C. 2921.43 (A)(1) requires that Division employees receive only compensation which is allowed by law. See Advisory Opinions No. 89-012, 89-014, 91-010, 92-014, and 92-015.

In this instance, the receipt of a free pass where there would otherwise be a cost would result in a pecuniary gain or benefit and thus is "compensation" for purposes of R.C. 2921.43 (A)(1). The Division employees who accept free passes which the Association provides to the Chief of the Division are receiving a supplement to their public compensation for purposes of R.C. 2921.43 (A)(1). Such compensation is not allowed by Divisions (D), (E), or (F) of Section 102.03, as discussed above, or by other provision of law. Therefore, R.C. 2921.43 (A)(1), as well as R.C. 102.03 (D) and (E), prohibits Division employees from accepting free passes provided by the Association in order to attend the Association's meetings without paying the required fee. Also, R.C. 2921.43 (A)(1), as well as R.C. 102.03 (F), prohibits the Association from giving the Chief of the Division free passes in order for Division employees to attend the Association's meetings without paying a fee.

It next becomes necessary to address your question regarding Division employees who give presentations at the Association's meetings.

The Association regularly invites Division employees to attend its meetings in order to give presentations on matters of concern to the oil and gas industry. It is a duty of their public employment for Division employees to provide information regarding R.C. Chapter 1509. and Division rules; thus, Division employees who are invited to give presentations at the Association's meetings are attending the Association's meetings in order to perform a duty of their public employment. See generally Advisory Opinion No. 85-014. As stated above, the Association does not require any person who gives a presentation at the meetings to pay a fee. Accordingly, the Association does not require Division employees who give presentations at its meetings to pay a fee to attend the balance of the meetings.

It is apparent that Division employees will provide most of their information at scheduled formal presentations; however, scheduled presentations provide only a limited opportunity for a person to disseminate information. Any scheduled presentation will impose time constraints which limit the depth of the information which a speaker can provide and the speaker's ability to answer questions set forth by members of the audience. However, it is recognized that the Association's meetings will present Division employees with numerous opportunities for contact outside of a scheduled formal presentation with parties who are interested in information which Division employees can provide. If Division employees who have been invited to give presentations at the Association's meetings are present throughout the course of the meeting they may utilize time before or after their presentations to informally answer questions and provide additional information to Association members and other interested persons attending the meeting. Indeed, the Association's practice of not requiring persons who give presentations at the meetings to pay a fee strongly suggests that the Association encourages knowledgeable individuals to be present to disseminate information, not only in scheduled formal presentations, but throughout the course of the meetings.

It is recognized that Division employees who are invited to give presentations at the Association's meetings and who then attend other sessions may benefit in their professional development in the same manner as the individuals who have paid a fee to attend the meetings since they will be exposed to information provided by others who are giving presentations. However, since Division employees attend the meetings in order to give presentations and

provide information, any benefit to their professional development is only incidental to the performance of their public duties, and it cannot be said that their ability to attend other sessions at the Association's meetings is of an improper character or is supplemental compensation. Therefore, in this situation, the Ohio Ethics Law does not prohibit Division employees from attending the balance of the meetings without paying a fee.

It must be emphasized that the Association's invitation to Division employees to give presentations and provide information at its meetings must be a valid request for Division employees to perform a duty of their public employment. An invitation by the Association must not be a subterfuge for providing conference registration fees to the Division employees. See Advisory Opinion No. 80-004 (R.C. 102.03 (D) prohibits a public official or employee from receiving conference registration fees from regulated or interested parties). It is imperative that the purpose of the Association's invitation to Division employees be solely for the employees to disseminate information for the benefit of the members of the Association and other interested parties attending the meeting and not for the benefit of the Division employees.

In Advisory Opinion No. 80-004, the Ethics Commission held that R.C. 102.03 prohibits members of a state licensing board from accepting conference registration fees and lodging from a professional organization whose members are licensed by the board despite the fact that several board members were asked to participate in a session at the conference. The opinion did not specify whether the professional organization required a fee from individuals who were making presentations at the conference. In this instance, as explained above, the Ohio Oil and Gas Association does not require any person who gives a presentation at their meetings to pay a fee. If the Association charged a fee to persons making presentations to attend the balance of a meeting, then the holding of Advisory Opinion No. 80-004 would apply and would prohibit Division officials and employees who make presentations at a meeting from attending the balance of the meeting without paying a fee.

Although, in this instance, Division employees who give presentations and participate in the Association's meetings are not prohibited from attending the rest of a meeting without paying a fee, R.C. 102.03 (D) and (E) and R.C. 2921.43 (A)(1) prohibit Division employees who make presentations and participate in the Association's meetings from accepting, soliciting, or using their authority to secure honoraria, or travel, meal, and lodging expenses incurred in connection with giving a presentation and participating in a meeting. See R.C. 102.03 (D) and (E), and R.C. 2921.43 (A)(1) (discussed above). Also, the Association is prohibited by R.C. 102.03 (F) and R.C. 2921.43 (A)(1) from giving or promising Division employees honoraria, or travel, meal, and lodging expenses incurred in connection with giving a presentation and participating in a meeting. See R.C. 102.03 (F) and R.C. 2921.43 (A)(1) (discussed above). The exceptions set forth in R.C. 102.03 (H) and (I) do not apply in this situation since the honoraria or expenses would be provided by the Ohio Oil and Gas Association, which, as explained above, is comprised of persons who are regulated by and interested in matters before the Division of Oil and Gas, and is itself interested in matters before the Division. See R.C. 102.03 (H) and (I) (discussed above).

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 the 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 and Division (A)(1) of Section 2921.43 of the Revised Code prohibit officials and employees of the Division of Oil and Gas of the Ohio Department of Natural Resources from accepting, soliciting, or using their authority or influence to secure passes from the Ohio Oil and Gas Association to attend the Association's meetings without paying a fee; (2) Division (F) of Section 102.03 of the Revised Code and Division (A)(1) of Section 2921.43 of the Revised Code prohibit the Ohio Oil and Gas Association from giving or promising the Chief of the Division of Oil and Gas of the Ohio Department of Natural Resources free passes enabling Division officials and employees to attend the Association's meetings without paying a fee; and (3) The Ohio Ethics Law does not prohibit officials and employees of the Division of Oil and Gas of the Ohio Department of Natural Resources who, as part of their official duties, provide information by giving presentations and participating in meetings of the Ohio Oil and Gas Association from attending an entire meeting without paying a fee, where the Association does not require any person who gives a presentation at the meeting to pay a fee; however, the officials and employees are prohibited by Divisions (D) and (E) of Section 102.03 of the Revised Code from accepting, soliciting, or using the authority or influence of their position to secure honoraria, or travel, meal and lodging expenses from the Association in connection with their presentations and participation in the meetings.

Marguerite B. Lehner

Marguerite B. Lehner, Chair
Ohio Ethics Commission