



OHIO ETHICS COMMISSION
THE ATLAS BUILDING
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Advisory Opinion
Number 90-006
April 11, 1990

Syllabus by the Commission:

- (1) The employees of the Ohio Student Loan Commission are not prohibited by the Ohio Ethics Law and related statutes from accepting, soliciting, or using their positions to secure employment with a nonprofit corporation to which the OSLC has been restructured, so long as the compensation and benefits paid to the employees by the nonprofit corporation are not substantially greater than the compensation and benefits they receive as state employees;
- (2) The members of the Ohio Student Loan Commission are not prohibited by the Ohio Ethics Law and related statutes from accepting, soliciting, or using their authority or influence to secure positions as directors of a nonprofit corporation to which the OSLC has been restructured, so long as the members receive no compensation or benefits as directors;
- (3) The members and employees of the OSLC are prohibited by R.C. 102.03(D) and (E) from accepting, soliciting, or using their positions to secure anything of value, including director's fees, compensation, and benefits, from a national guarantee agency with which the OSLC is seeking to affiliate after it has been restructured as a nonprofit corporation.

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You have asked whether the Ohio Ethics Law and related statutes would prohibit the Ohio Student Loan Commission (OSLC) from considering certain matters relative to the restructuring of the OSLC.

You have stated, by way of history, that the OSLC is currently considering various options with regard to its structure and organization. The Planning Subcommittee charged with studying the restructuring has recommended that the OSLC seek legislation to convert the OSLC from a state commission to a nonprofit corporation and seek affiliation with a national guarantee agency. The report of the Subcommittee also suggests that the terms of the Commissioners, personnel, wages, and fringe benefits should be preserved under the new structure, so that the new nonprofit corporation would employ OSLC staff and offer to each Commissioner a position as trustee of the nonprofit corporation. Comparable benefits would be offered and compensation would be no less than is currently being earned. The report also recommends that the guarantor proposing affiliation commit to the preservation of the separate nonprofit corporation, and provide for the continuity of OSLC in terms of personnel, wages, and fringe benefits. All assets and liabilities of OSLC would be transferred to the newly created nonprofit corporation.

Divisions (D) and (E) of Section 102.03 of the Revised Code read as follows:

- (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.

The term "public official or employee" is defined for purposes of R.C. 102.03 to include any person who is elected or appointed to an office or is an employee of any commission of the state. See R.C. 102.01(B) and (C). The OSLC is, at this time, a commission of the state. See R.C. 3351.05. Therefore, the members, executive director, and other employees of the OSLC are subject to the prohibitions of R.C. 102.03.

Your question will first be addressed with respect to the executive director and other employees of the OSLC. The term "anything of value" is defined for purposes of R.C. 102.03 to include money, any promise of future employment, and every other thing of value. See R.C. 1.03; 102.01(G). Therefore, employment for the executive director and employees of the OSLC with the newly formed corporation and the attendant compensation and benefits would fall within the meaning of "anything of value," regardless of whether such employment would be considered new or continued employment. The issue, therefore, is whether such employment and compensation are of such character as to manifest a "substantial and improper" influence upon the Commission employees. In Advisory Opinion No. 86-011, the Ethics Commission stated that this determination "depends on the facts and circumstances of the particular case." The opinion goes on to state, "with respect to the question of propriety, the focus is primarily on the source of the thing of value." More specifically, the Commission has held that a public official or employee is prohibited from seeking employment from an organization that is regulated by, doing business or seeking to business with, or is interested in matters before, the official's or employee's public agency, unless he is able to withdraw from consideration of, or participation in, that organization's interests. See Advisory Opinions No. 77-003, 77-006, and 82-002.

In this instance, the source of the thing of value, the employment and attendant compensation, would be the newly formed nonprofit corporation. The nonprofit corporation is not regulated by, interested in matters before, or doing or seeking to do business with, the OSLC. Indeed the nonprofit corporation would be, in many respects, the same organization as the OSLC, albeit in a different form, legally. The continuation or transfer of the employees' employment relationship with the OSLC to the organization as the OSLC is restructured is not of an improper character. Therefore the officials and employees of the OSLC are not prohibited from accepting or using their positions to secure continued employment with the nonprofit corporation which the OSLC will become.

In a related line of opinions, the Commission has held that R.C. 102.03(D) prohibits a public official or employee from using his position to secure anything of value for, or otherwise participating in matters affecting the interests of, an organization with which he is negotiating employment, or from which he has accepted employment. See Advisory Opinions No. 86-006 and 87-004. Again, this situation is distinguishable. In this instance, the officials and employees of the OSLC are not seeking employment from

an organization separate and apart from the OSLC, but are, instead, arranging the continuation of their employment with a newly formed organization that will stand in place of their current employer, the OSLC. Therefore, the officials and employees of the OSLC who are participating in the restructuring of the OSLC are not prohibited from subsequently accepting employment with the nonprofit corporation.

It must be noted, however, that the executive director and other employees of the OSLC would be prohibited from accepting, soliciting, or using their positions to secure compensation or benefits from the nonprofit corporation that are greater than that which the employees are receiving as OSLC employees. See Advisory Opinion No. 87-008 (a member of a board of education is prohibited from soliciting or using his authority or influence to secure employment with the school district). It is the understanding of the Ethics Commission that the benefits that would be offered to the employees by the nonprofit corporation would not be identical to the benefits they receive as state employees. For example, the OSLC employees would no longer be eligible for state insurance and retirement benefits if they are employed by the nonprofit corporation. However, the benefits and compensation that are offered in total to the employees may not be substantially greater than what the employees are receiving from the state.

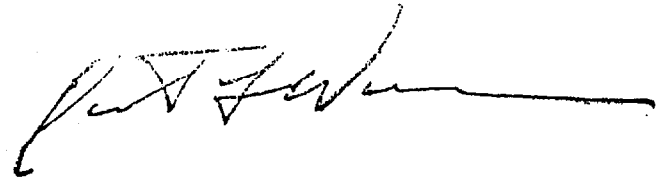
You have also asked about the members of the OSLC. Your office has indicated that the nonprofit corporation may offer fees or benefits to the corporation's directors. Such fees or benefits would be considered "anything of value" for purposes of R.C. 102.03. Members of the OSLC currently receive no compensation for their service, but are reimbursed for their necessary expenses. See R.C. 3351.06. R.C. 102.03 would, therefore, prohibit the OSLC members from accepting, soliciting, or using their positions to secure director's fees or benefits, other than their necessary expenses from the nonprofit corporation. As noted above, the Commission held in Advisory Opinion No. 87-008 that a member of a board of education is prohibited by R.C. 102.03(D) and (E) from soliciting or using his official authority or influence to secure for himself employment with the school district. Members of the OSLC would be prohibited from using the restructuring of the OSLC as an opportunity to secure greater compensation or benefits than those to which they are currently entitled. Because the OSLC members currently receive no compensation, they would be prohibited from accepting, soliciting, or using their official positions to secure compensation from the nonprofit corporation.

The conclusions reached in this opinion are not affected by the mere fact that the OSLC may also seek to affiliate with a national guarantee agency after converting to a nonprofit corporation, and that one of the terms of the affiliation is that the national guarantee agency agree to the continued employment association of OSLC members and employees with the nonprofit corporation. As discussed above, this continuation of tenure would not violate the Ohio Ethics Law. Therefore, the OSLC's efforts to affiliate with a guarantee agency that will agree to this continuation would not constitute a violation of the Ethics Law.

R.C. 102.03 would, however, prohibit the members and employees of the OSLC from receiving any compensation or benefits from the guarantee agency. Guarantee agencies are currently competitors of the OSLC. Furthermore, if the OSLC is negotiating affiliation with a guarantee agency, then the agency would be interested in matters before, and seeking to do business with, the OSLC. Therefore, R.C. 102.03(D) and (E) would prohibit the members and employees from accepting, soliciting, or using their position to secure anything of value, including director's fees, compensation, and benefits, from the affiliated agency.

The conclusions of this opinion are based on the facts presented and are rendered only with regard to questions arising under Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised that: (1) the employees of the Ohio Student Loan Commission are not prohibited by the Ohio Ethics Law and related statutes from accepting, soliciting, or using their positions to secure employment with a nonprofit corporation to which the OSLC has been restructured, so long as the compensation and benefits paid to the employees by the nonprofit corporation are not substantially greater than the compensation and benefits they receive as state employees; (2) the members of the Ohio Student Loan Commission are not prohibited by the Ohio Ethics Law and related statutes from accepting, soliciting, or using their authority or influence to secure positions as directors of a nonprofit corporation to which the OSLC has been restructured, so long as the members receive no compensation or benefits as directors; (3) the members and employees of the OSLC are prohibited by R.C. 102.03(D) and (E) from accepting, soliciting, or using their positions to secure anything of value, including director's fees, compensation, and benefits, from a national guarantee agency with which the OSLC is seeking to affiliate after it has been restructured as a nonprofit corporation.



David L. Warren, Chairman
Ohio Ethics Commission