



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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October 11, 1988

Informal Opinion 1988-INF-1011

Carol D. Austin, Ph.D., Director
Ohio Department of Aging

Dear Dr. Austin:

You have asked whether the Ohio Ethics Law and related statutes prohibit you, as the Director of the Department of Aging, from accepting honoraria and travel expenses for speaking at conferences and meetings.

Divisions (D), (E), and (F) 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 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 "public official or employee" is defined for purposes of R.C. 102.03 in R.C. 102.01(B) and (C) to include any person who is elected or appointed to an office or is an employee of any department of the state. The Department of Aging is a department established within state government. See R.C. 121.02(S); 173.01. The Director of the Department of Aging is appointed by the Governor, with the advice and consent of the Senate, see R.C. 121.03, and is charged with administering the Department, and exercising the powers and performing the duties vested by law in the Department, see R.C. 121.02. Therefore, you are, as the Director of the Department of Aging, a "public official or employee" for purposes of R.C. 102.03, and subject to the prohibitions of that Section.

The term "anything of value" is defined for purposes of R.C. 102.03 to include money and every other thing of value, see R.C. 1.03, 102.01(G), and includes honoraria, and travel, meal, and lodging expenses. See Ohio Ethics Commission Advisory Opinions No. 79-006, 80-004, 84-010, and 86-011. The Ethics Commission has held that the receipt of honoraria or expenses from a party that is interested in matters before, regulated by, or doing or seeking to do business with, a public official's or employee's agency would be of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to his duties. The Commission has concluded, consequently, that Divisions (D) and (E) of Section 102.03 prohibit a public official or employee from accepting, soliciting, or using the authority or influence of his position to secure honoraria, or travel, meal, and lodging expenses if such honoraria or expenses are paid or

reimbursed 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. See Advisory Opinions No. 79-006, 80-004, 84-010, and 86-011. 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 honoraria or travel, meal, and lodging expenses to an official or employee of that agency. See Advisory Opinions No. 87-005 and 87-007.

You have stated in your letter, and it is my understanding from a member of your staff, that the Department of Aging is responsible for distributing federal funds to twelve designated area agencies pursuant to a formula based on population. These twelve area agencies then pass on those funds to subrecipients chosen by the agencies; funding is again based on population. Your staff has indicated that the Department will not direct an area agency to choose a particular subrecipient for funding. However, the Department may review an area agency's method of determining what subrecipients receive funding, and may challenge the choice of a particular subrecipient if it believes such selection was inappropriate. Your staff has indicated that the Department also awards grants for senior facility construction and for research on Alzheimer's Disease. In these instances, the Department itself selects the recipients of those grants.

It is clear that those agencies which receive, or have applied for, grants from the Department of Aging would be deemed to be interested in matters before, or doing or seeking to do business with, the Department. These agencies would include the twelve designated area agencies and the applicants for and recipients of the construction grants and Alzheimer's Disease research grants. In addition, the subrecipients of moneys from the twelve area agencies may be deemed to be interested in matters before the Department, since the Department has review authority over the method by which subrecipients are chosen and may challenge the selection of a particular subrecipient in cases where the Department believes the selection was inappropriate. Therefore, you are prohibited by R.C. 102.03 from accepting, soliciting, or using your position to secure honoraria or expenses from these grantee agencies, and the agencies are prohibited from promising or giving to you honoraria or expenses. Your staff has indicated that you do not intend to accept from these agencies honoraria or expenses, and that you would address the agencies free of charge.

It is my understanding from your staff that you do wish, however, to address larger organizations on a national basis, for which an honorarium and expenses would be charged. These organizations would include universities, affiliates of national organizations concerning the elderly and large, private organizations. It is my understanding that there are medical colleges in Ohio which are receiving grants from the Department to conduct research on Alzheimer's Disease. You would be prohibited from receiving honoraria or expenses from those universities with which the medical colleges that have applied for or received grants, are affiliated, as discussed above. Otherwise, it is my understanding from your staff that the organizations receive no funding from the Department, and are not otherwise interested in matters before, regulated by, or doing or seeking to do business with, the Department of Aging. You would not, therefore, be prohibited from accepting honoraria, or travel, meal, and lodging expenses from these organizations which are not interested in matters before, regulated by, or doing or seeking to do business with, the Department of Aging.

Your staff has indicated that the organizations from which you wish to receive honoraria are generally located outside the state of Ohio, and the conclusion that you may accept honoraria from these organizations is based on this assertion. It would

create the appearance of impropriety if you were to accept honoraria from agencies within Ohio to speak about issues concerning the aging since such matters fall within the scope of your official duties.

You have also asked about reporting the receipt of payments on your financial disclosure statement. Division (A)(2) of Section 102.02 of the Revised Code requires an official to identify on his financial disclosure statement "every source of income over five hundred dollars, including honorariums, received during the preceding calendar year, in his own name or by any other person for his use or benefit . . . and a brief description of the nature of the services for which the income was received." You are, therefore, required to disclose on your annual financial disclosure statement each source of an honorarium over five hundred dollars. However, R.C. 102.02(A)(2) does exclude sources of "reasonable expenses" from the disclosure requirement.

You also wish to know whether the Department of Aging may accept payments from organizations before which you speak in lieu of your acceptance of honoraria. It is my understanding that the organizations about which you ask are not the recipients or subrecipients of funds from the Department, but rather, are those organizations described by your staff that are not interested in matters before, regulated by, or doing or seeking to do business with the Department. There is no provision in the Ethics Law and related statutes which would prohibit an organization from giving to an agency donations, or the agency from accepting such donations, where the donor is not regulated by, interested in matters before, or doing or seeking to do business with, the public agency, and, indeed, direct donations to the Department may help avoid any appearance of impropriety that you are using your position with the Department of Aging for your own financial benefit. If an organization donated money directly to the Department of Aging in appreciation of your speech before the organization, you would not be required to disclose that donation on your financial disclosure statement. You have also inquired about the situation, however, where an organization would pay you an honorarium, and you would then remit the payment to the Department. In that instance, you would be required to report the source of the honorarium, if it were in excess of five hundred dollars, on your financial disclosure statement, since you received the honorarium.

You have also asked about the authority of the Department of Aging to establish a rotary account into which an organization could donate money or into which you could remit moneys paid to you as honoraria. The Ethics Commission has no authority to address this question. You may wish to contact State Accounting or the Office of Budget and Management.

This informal advisory opinion was approved by the Ethics Commission at its meeting on October 11, 1988, based on the facts presented. The opinion 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. If you have any questions concerning this matter, please contact me.

Sincerely,



Melissa A. Warheit
Executive Director