



**OHIO ETHICS COMMISSION**

8 East Long Street, 10th Floor

Columbus, Ohio 43215

Telephone: (614) 466-7090

Fax: (614) 466-8368

September 13, 1996

Informal Opinion 1996-INF-0913-1

Richard A. Edwards  
County Administrator  
County of Wood

Dear Mr. Edwards:

In your letter to the Ethics Commission, you ask whether the Ohio Ethics Law and related statutes prohibit a county employee from marketing a computer program which the employee developed, in part, at county expense and on county time, as a mechanism to perform his official duties at his county agency.

As explained below, the Ohio Ethics Laws and related statutes prohibit the county employee from marketing the computer program.

**Facts**

The employee is the Assistant Director/Fiscal Officer for the Wood County Department of Human Services (Department). The employee, on his own initiative, developed a computer program to track and calculate payroll and accrual balances as a mechanism to perform his official duties at the Department. The employee worked on the computer program at the county office and at his home.

The employee desires to adapt the program for use by other public agencies. Specifically, he desires to re-write the program and market it to other public agencies in connection with David M. Griffith, Ltd. The employee desires to use the Department as a test locale for the re-written computer program and provide the re-written version to the Department at no cost.

**Prohibitions Imposed by R.C. 102.03 (D) and (E)**

Your attention is directed to R.C. 102.03 (D) and (E), which provide:

- (D) No public official or employee shall use or authorize the use of the authority or influence of 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 the public official or employee with respect to that person's duties.

Richard A. Edwards

September 13, 1996

Page 2

- (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 the public official or employee with respect to that person's duties.

A county employee is a "public official or employee" and subject to the prohibitions of R.C. 102.03 (D) and (E). Advisory Op. No. 88-003.

The term "anything of value" is defined for purposes of R.C. 2921.42 in R.C. 1.03 to include money and every other thing of value. R.C. 1.03, 102.01 (G); Advisory Ops. No. 82-002 and 89-003. The earnings that the Department employee would receive from the sale of computer programs would constitute a substantial thing of value for purposes of R.C. 102.03 (D) and (E). Advisory Op. No. 84-013.

### **Precedent**

The Ethics Commission has held that the Ohio Ethics Law does not prohibit a public official or employee from engaging in outside private business activity so long as no conflict of interest exists between the official's or employee's public and private positions. Advisory Ops. No. 81-007, 85-006 and 86-008. However, the private business interests of a public official or employee could impair his objectivity and independence of judgment with regard to his official decisions and responsibilities. Because those business interests may create an impairment upon the independence of the official, they may be of such a character as to manifest an improper influence upon him with respect to his public duties in contravention of R.C. 102.03 (D) and (E), and therefore prohibit the public official or employee from engaging in the private outside business activity. Advisory Ops. No. 81-007, 84-009 and 85-006. See also Advisory Ops. No. 77-006, 86-007, and 86-008. The prohibitions imposed by R.C. 102.03 (D) and (E) serve the public interest in effective, objective, and impartial government by preventing the creation of a situation which may impair the objectivity and impartiality, and therefore the effectiveness, of a public official or employee, or the public agency with which he serves. Advisory Ops. No. 89-014 and 90-002.

The Ethics Commission has further held that a thing of value received by a public official or employee through private outside business activity manifests an improper influence upon him with respect to his duties whenever the thing of value results from the official's or employee's use of public time, facilities, and resources. Advisory Ops. No. 84-012 and 84-013. The Commission has held that a public official or employee owes his responsibility to the exercise of the public trust by performing his official duties for the public agency with which he serves. Advisory Op. No. 89-010. Public agencies provide resources to its officials and employees for the performance of these tasks and not for the official's or employee's personal financial gain or benefit. Id.

Richard A. Edwards  
September 13, 1996  
Page 3

Accordingly, R.C. 102.03 (D) prohibits a public official or employee from using public time, facilities, or resources in conducting a private business. Advisory Ops. No. 84-012, 84-013, 85-013, 85-014, 90-003, and 90-009.

As an example, in Advisory Opinion No. 85-014, the Ethics Commission addressed whether an employee of the Division of Geological Survey in the Department of Natural Resources could receive payment for articles written on public time and as part of his official duties. The Commission held that, because the official duties of the Department of Natural Resources employee including writing articles, he could not receive payments from private outside sources for his articles that he had written as part of his public duties.

In the instant situation, the Department employee developed the computer program to perform his duties at his county agency, in part on county time and in part on his own personal time. The issue in your request becomes whether the Department employee's use of his personal time, in addition to county time, to develop the initial computer program is a factor in determining whether the prohibition against using public time, facilities, or resources to conduct a private business does not apply in the instant situation.

The Commission has held that R.C. 102.03 (D) and (E) do not prohibit a public official or employee from donating goods and services to their public agency provided that the official or employee receives no pecuniary gain from the donation and does not use the donation to secure anything of value for himself. Advisory Op. No. 90-003. In the instant situation, the department employee's use of his personal time to develop a computer program as a mechanism to perform his official duties at his county agency is a donation of his services to his public agency. The employee now seeks pecuniary gain by adapting this computer program for use by other public agencies and marketing it to other public agencies. Therefore, in the instant situation, the Department employee seeks to benefit from his donation of his personal time, in addition to county time, to develop the computer program.

Furthermore, you state that the Department employee desires to use the Department as a test locale for the re-written computer program. The Ethics Commission has held that the prohibition against a public official or employee using public time, facilities, or resources in conducting a private business, includes conducting demonstrations for clients on public equipment at public facilities. Advisory Op. No. 84-013.

In response to these circumstances, R.C. 102.03 (D) and (E) prohibit a department employee from privately marketing a re-written version of a computer program initially produced on county time and at county expense, through the donation of private time, and sought to be tested on Department resources. This prohibition exists regardless of whether the re-written program is donated to the County.

Richard A. Edwards  
September 13, 1996  
Page 4

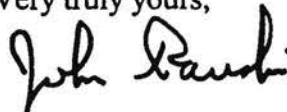
**Conclusion**

As explained above, the Ohio Ethics Laws and related statutes prohibit the county employee from marketing the computer program.

The statutes under the Ethics Commission's jurisdiction are designed to prohibit public officials and employees from using their public position for personal financial gain or benefit. Accordingly, this advisory opinion is limited to addressing restrictions that the Ethics Laws and related statutes impose upon the county employee. This Office cannot answer questions pertaining to the proprietary nature of the computer program developed by the county employee using county equipment and time.

This informal advisory opinion was approved by the Ethics Commission at its meeting on September 13, 1996. The opinion is based on the facts presented and is limited to questions arising under Chapter 102. and Sections 2921.42, 2921.421, and 2921.43 of the Revised Code and does not purport to interpret other laws or rules. If you have any further questions, please feel free to contact this Office again.

Very truly yours,



John Rawski  
Staff Attorney