



OHIO ETHICS COMMISSION

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March 14, 1997

Informal Opinion 1997-INF-0314-2

Valerie A. Roller
Assistant Attorney General
Consumer Protection Section

Dear Ms. Roller:

In your letter to the Ethics Commission, you ask whether the Ohio Ethics Laws and related statutes, specifically R.C. 102.03 (H), prohibit you from receiving compensation for preaching religious doctrine and instruction as an evangelical minister at congregational meetings and religious events. Your question arises because of the prohibition against the receipt of honoraria for those public officials and employees who file financial disclosure statements that was enacted in 1994.

As explained below, under the circumstances that you have presented, you are not prohibited by Ohio's Ethics Law from receiving compensation in the form of a monetary gift in return for preaching religious doctrine and instruction as an evangelical minister at congregational meetings and religious events from individuals who attend the meetings and religious events.

Facts

You state that you are a non-management assistant attorney general and are assigned to the Office of the Attorney General's Consumer Protection Section. You have been employed as an assistant attorney general for approximately ten years. You also state that R.C. 102.02 (A) requires you to file a financial disclosure statement with the Ohio Ethics Commission.

For approximately fifteen years, you have been ministering in some form for your church. Recently, you have become active in the "pulpit" evangelical ministry. As an evangelical minister, you travel to congregational meetings and religious events to preach religious doctrine or instruction. You state that individuals attending the congregational meetings and religious events, by custom, provide compensation in the form of a monetary gift, commonly called a "love offering," to the evangelical minister. Individuals who provide these monetary gifts represent the entire spectrum of society. You conclude by stating that the religious doctrine and instruction you preach does not relate to your duties as a public official or employee.

The issue you have presented is whether a monetary gift that an evangelical minister receives from individuals for preaching religious doctrine and instruction at congregational meetings and religious events is banned honorarium for purposes of R.C. 102.01 (H). You have expressed concern that the statutory definition of honorarium and the prohibition imposed by R.C. 102.03 (H) could preclude a public official or employee, who is subject to its prohibitions, from engaging in religious activity that involves speaking in any form if the public official or employee would receive compensation from individuals attending the religious meeting.

Prohibition on Honoraria

R.C. 102.03 (H) was enacted in Am. Sub. H.B. 492 120th Gen. A. (1994) (eff. May 12, 1994) and reads in pertinent part:

No public official or employee . . . who is required to file a financial disclosure statement under Section 102.02 of the Revised Code shall solicit or accept, and no person shall give to that public official or employee, an honorarium.

R.C. 102.01 (H) defines the term "honorarium" for purposes of the restriction contained in R.C. 102.03 (H) that reads, in pertinent part:

"Honorarium" means any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event. . . meal, or similar gathering.

The prohibition contained in R.C. 102.03 (H), enacted by the General Assembly as a remedial measure in 1994, prohibits a public official or employee who files a financial disclosure statement from receiving honoraria from any source regardless of the lack of any connection between the donor and the public official's or employee's agency. Advisory Op. No. 94-006. In Advisory Opinion No. 94-006, the Commission discussed the history and public policy purposes that the General Assembly appeared to support in its initiation and adoption of R.C. 102.03 (H). See also Advisory Op. No. 79-006 (prior to the enactment of R.C. 102.03 (H), R.C. 102.03 (D) prohibited a public official or employee from receiving an honorarium from an interested or regulated party because the receipt of the honorarium could affect his subsequent decisions in matters involving the donor of the honorarium.)

In Advisory Opinion No. 94-006, the Ethics Commission construed the term "honorarium," and the meaning of the phrase "any speech given." Accordingly, the Commission adopted the definition of the word "speech" that is found in Webster's New World Dictionary, Second College Edition, (1976) at 1368. The adopted definition of the word "speech" was "a talk or address given to an audience." The Ethics Commission contrasted this definition to that of the compensation received by a state employee, who filed a financial disclosure statement, for teaching at institutions of higher education. In Advisory Opinion No. 94-006, the Commission held that this type of compensation was not prohibited honorarium because teaching involved activities that extended beyond giving talks or addresses to audiences.

Constitutional Construction of R.C. 102.03 (H)

A Revised Code provision that governs statutory interpretation is R.C. 1.47, which reads:

In enacting a statute, it is presumed that:

- (A) Compliance with the constitutions of the state and of the United States is intended;
- (B) The entire statute is intended to be effective;
- (C) A just and reasonable result is intended; and
- (D) A result feasible of execution is intended.

The Ethics Commission has considered the requirements of R.C. 1.47 in its advisory opinions, including the impact of the prohibitions imposed by the Ethics Law and related statutes upon the constitutional rights and privileges of public officials and employees. See also R.C. 1.49 (in interpreting a statute, the consequences of a particular construction may be considered).

In Advisory Opinion No. 90-013, the Commission held that the Ethics Law and related statutes did not preclude a person from serving on the board of the port authority because he was a defendant in a lawsuit brought by the port authority. The Commission held in Advisory Opinion No. 90-013:

The Constitution of the State of Ohio provides: 'All courts shall be open, and every person, for an injury done to him in his lands, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.' Ohio Const. art. I, Sec. 16. An individual cannot be denied access to the courts for redress of damages because of his status as a public employee. See generally State v. Barry, 123 Ohio St. 458, 463-64 (1931).

Accordingly, the Commission held that a port authority member is not prohibited from pursuing or defending a legal claim against the port authority.

In Advisory Opinion No. 92-019, the Commission held that the Ethics Law and related statutes do not prohibit a city council member from appearing, as an individual, before council to protect his private property interests if he acts in a manner that is available to any citizen of the city who is not a council member. In Advisory Opinion No. 92-019, the Commission held:

When applying the Ethics Law to specific situations, the Ethics Commission must at times strike a delicate balance between the personal rights of an individual who serves as public official and the necessary protection afforded the public against self-dealing and conflict of interest. . . . In order to provide unbiased decision-making for all of the citizens represented and served by public officials and

employees, the Ethics Law must, at times, limit the private activities of the public officials and employees. However, the Ethics Commission, in interpreting the Ethics Law, must ensure that reasonable and justifiable limits on public officials and employees, reasonably related to the public interest served, are imposed and also that the rights afforded to all citizens are realized by public officials and employees to the greatest extent possible. A public official or employee, does not, by virtue of holding a public office or public employment, and within the limits established by the Ethics Law, waive all of his rights and privileges as a citizen of this state.

In response to your question in the instant situation, therefore, it is necessary to consider Article I, Section 7 of the Constitution of the State of Ohio, which provides in part:

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience.

In Bacher v. North Ridgeville, 47 Ohio App. 2d 164 (Lorain County 1975) the Court considered Article I, Section 7 of the Ohio Constitution, and the First and Fourteenth Amendments of the United States Constitution, and held that the freedom to act on one's religious beliefs may not be curtailed absent a compelling state interest. The Court held:

Freedom of religion has two facades. There is the freedom to believe, which is an absolute freedom. There is, likewise, the freedom to act, which may be controlled when it conflicts with the rights of others.

...
The freedom to act on behalf of one's religious beliefs does not free an individual from responsibility to conduct themselves obediently to laws, which are imperatively necessary to protect society as a whole from grave and pressing dangers to interests which the state may lawfully protect. . . . [t]here must be a compelling state interest to justify and warrant a curtailment in any way of first amendment rights. (Citations omitted).

In the instant situation, it is apparent that the issue does not concern your freedom to believe. Your freedom to act on your religious beliefs and receive compensation for so doing, however, would be curtailed if R.C. 102.03 (H) prohibits you from engaging in religious activity as an evangelical minister who travels to congregational meetings and religious events to preach religious doctrine or instruction when the individuals attending the meetings and events provide you with compensation in the form of a monetary gift.

All citizens of the state are afforded constitutional rights and privileges of religious freedom. The need for a compelling state interest to exist before these rights may be curtailed in any way is reiterated by the law. Absent a compelling interest, the Ethics Commission will not render an advisory opinion holding that R.C. 102.03 (H) prohibits a public official or employee, who is subject to its prohibitions, from speaking on religious doctrine and instruction as a minister,

because the public official or employee would receive compensation from individuals who attend the congregational meetings and religious events.

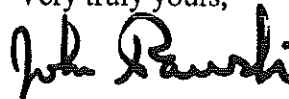
It is recognized that 102.03 (H) prohibits a public official or employee who files a financial disclosure statement from receiving an honorarium from any source even if there is no connection between the donor and the official's or employee's public agency. The Ethics Commission, however, is convinced that prohibiting you from preaching religious doctrine and instruction as an evangelical minister, if you received compensation from individuals attending the congregational meetings and religious events, was not intended by the restriction of R.C. 102.03 (H). A contrary construction of R.C. 102.03 (H) would not meet the requirements of statutory interpretation set forth in R.C. 1.47 (A) and (C) because such a holding would neither comply with the constitutions of the state and of the United States, nor work a just and reasonable result.

Accordingly, as explained above, under the circumstances that you have presented, you are not prohibited from preaching religious doctrine and instruction as an evangelical minister at congregational meetings and religious events when the individuals attending the meetings and events provide you with compensation.

It must be noted that R.C. 102.02 (A)(2)(a) requires a public official or employee who files a financial disclosure statement to identify every source of income received during the preceding calendar year, in his own name or by any other person for his use or benefit, and to provide a brief description of the nature of the services for which the income was received. See also R.C. 102.01 (E) ("Income" includes gross income as defined and used in the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended). Therefore, R.C. 102.02 (A)(2)(a) requires that you must report as income the compensation that you receive from individuals who attend congregational meetings and religious events for preaching on religious doctrine and instruction on your financial disclosure statement. Furthermore, a public official or employee who engages in any private activity that results in financial gain is governed by the restrictions imposed by the Ethics Laws and related statutes to prevent misuse of the public resources provided to the official or employee. See Advisory Op. No. 96-004.

This informal advisory opinion was approved by the Ethics Commission at its meeting on March 14, 1997. 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