



OHIO ETHICS COMMISSION

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September 26, 1997

Informal Opinion 1997-INF-0926-2

W. Curtis Stitt, Superintendent
Ohio Department of Commerce
Division of Financial Institutions

Dear Mr. Stitt:

In your letter to the Ethics Commission, you have asked three questions concerning the Division of Financial Institutions' (Division), of the Ohio Department of Commerce (Commerce), co-sponsorship of a seminar with a federal regulatory agency and trade associations comprised of parties that are regulated by and interested in matters pending before the Division. In a subsequent telephone conversation with the Chief Advisory Attorney for the Ohio Ethics Commission, you stated that one of the questions has already been resolved, but that you need an answer to the two remaining questions in your letter.

The two questions, which have been set forth below in their entirety, concern the Division's co-sponsorship of a seminar with a federal regulatory office and non-governmental entities. As explained below, under the facts that you have provided in your letter, the prohibitions imposed by the Ohio Ethics Law and related statutes do not prohibit the Division from co-sponsoring the seminar.

Facts

You state that the Division, which is the primary regulatory agency for state-chartered banks, and the Office of the Comptroller of the Currency (OCC), the regulatory agency for federally-chartered banks, co-sponsor a seminar known as "Ohio Bankers Day" for state-chartered and federally-chartered banks located within Ohio. The Ohio Bankers Day agenda consists of a conference program and a reception.

The conference program consists of a day of presentations conducted by speakers from the Division, OCC, and other governmental and non-governmental entities. Individuals attending the conference will pay conference fees to the Conference of State Bank Supervisors (CSBS). The CSBS is an organization that represents the banking regulatory agencies of the states and territories of the United States. The Division is a dues-paying member of CSBS. The fees paid by the attendees will cover the costs of the conference. The Division will pay the conference fees to CSBS for all Division employees who will attend the conference. But conference fees will be waived for all conference speakers, including Division employees, during the portions of the conference at which they are speaking or are available for questions by attendees. CSBS will handle the contracts for facilities, the outside speakers, the meals, refreshments for breaks, and a reception.

The reception for attendees and others will be held the evening before the scheduled presentations. The Division, OCC, and two trade associations will co-sponsor the reception. The trade associations are the Ohio Bankers Association (OBA) and the Community Bankers Association of Ohio (CBAO). The membership of the OBA and the CBAO consists of federally and state-chartered banks. The Division is not a member of either the OBA or the CBAO. You state that there will be an open bar at the reception, but the Division will require its employees to purchase any alcoholic beverages that they consume with their own funds.

Questions

You have asked whether it is permissible, in light of the prohibitions imposed by the Ohio Ethics Laws and related statutes, for:

- (1) The Division to be a co-sponsor of the reception with the OCC, the OBA, and the CBAO; and
- (2) The Division to co-sponsor the conference program with the OCC and have CSBS receive the conference fees, contract for the facilities, speakers, etc., and to pay the expenses of the conference for parties.

Receipt of Anything of Value--R.C. 102.03(D) and (E)

Issues pertaining to conference registration fees, honoraria, travel, meal, and lodging expenses, and other similar payments and reimbursements may implicate Divisions (D) and (E) of Section 102.03 of the Revised Code, which read as follows:

- (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.
- (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.

The pertinent elements of Divisions (D) and (E) are: (1) a public official or employee; (2) is prohibited from accepting, soliciting, or using the authority or influence of his office or employment to secure; (3) anything of value, or the promise or offer of anything of value; (4) which could manifest a substantial and improper influence; (5) upon him with respect to his duties. Also, it must be noted that R.C. 102.03(F) prohibits private parties from promising or giving anything of value to a public official that could manifest a substantial and improper influence upon that person 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 employed by a public agency. R.C. 102.01(B). The Department of Commerce is an administrative department created within state government and includes the Division of Financial Institutions. R.C. 121.02(B), 121.08. Thus, Division employees are "public officials and employees" who are subject to the prohibitions of R.C. 102.03.

R.C. 1.03 defines "anything of value" for purposes of R.C. 102.03 to include money and every other thing of value. R.C. 102.01(G). Conference registration fees, honoraria, travel, meal, and lodging expenses, and other similar payments and reimbursements are things of value for purposes of R.C. 102.03(D) and (E). Ohio Ethics Commission Advisory Opinions No. 77-005, 86-011, and 92-018.

The Ethics Commission has held that R.C. 102.03(D) and (E) prohibit a public official or employee from soliciting, accepting, or using the authority or influence of his public office or employment to secure conference registration fees, honoraria, travel, meal, and lodging expenses, and other similar payments and reimbursements from 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. Adv. Ops. No. 86-011, 89-014, and 90-012. Also, a public official or employee may not solicit, accept, or use his authority or influence to secure such things of substantial value if it could impair the official's or employee's objectivity and independence of judgment with respect to his official actions and decisions for his public agency. Id.

For example, in Advisory Opinion No. 80-004, the Commission held that R.C. 102.03(D) 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. The Commission has also held that public officials and employees are prohibited from accepting expenses from a prohibited source even if the expenses are paid as reimbursement to the official's or employee's public agency. Adv. Ops. No. 89-013 and 92-018.

The Ethics Commission has held that R.C. 102.03(D) and (E) prohibit a public official or employee from receiving expenses even if the official or employee is performing a function directly related to his public duties, such as conducting an inspection, representing his public agency at a ceremony, providing information about his agency, or attending a conference or seminar for his professional development. Adv. Ops. No. 84-010, 86-011, and 92-018. The Commission has explained that the direct or indirect payment of expenses to a official or employee by a party whose interests may depend upon the performance of the official's or employee's responsibilities could impair the official's or employee's objectivity and independence of judgment in future matters affecting the party. Id. But see Adv. Op. No. 87-005 (holding that a public agency is not prohibited from receiving travel expenses from an otherwise prohibited party if the General Assembly has statutorily authorized the agency to charge the party for the travel).

But the Ethics Commission has held that public officials and employees are not prohibited from accepting a donation from a vendor, or an interested or regulated party, in their official capacities on behalf of their public agency, provided that the donation is for the use of their public agency and the donation neither pays the expenses of, nor provides a personal benefit to, the agency's officials or employees. Adv. Op. No. 89-002. The Commission has, however, warned that an appearance of impropriety would be created if a party makes a donation to a public agency and the agency accepts the donation where a specific case is pending before the agency involving that party, or where it could be reasonably foreseen that an action will come before the agency. Adv. Ops. No. 89-002 and 92-015.

In your questions, neither the conference situation nor the reception situation involve Division officials and employees receiving conference registration fees, honoraria, travel, meal, and lodging expenses, and other similar payments and reimbursements, or donations, from any source other than the Division. Rather, with regard to the conference, the Division is paying the conference fees for its employees who are attending the conference, to CSBS, of which the Division is a dues-paying member. Essentially, the Division is contracting with CSBS to provide services associated with the organization of the Ohio Bankers Day seminar. Also, with regard to the reception, despite the fact that the reception is co-sponsored by the OBA and the CBAO, which are trade organizations that are comprised of individuals who are interested in matters before or regulated by the Division, nothing in the facts that you have provided suggests that OBA or CBAO will directly or indirectly pay conference registration fees, honoraria, travel, meal, and lodging expenses, and other similar payments and reimbursements to Division officials or employees. As explained above, R.C. 102.03(D) and (E) prohibit a public official or employee from soliciting, accepting, or using the authority or influence of his public office or employment to secure substantial things of value from an interested or regulated party. If the facts that you have provided in your letter should change, and it is contemplated that any source other than the Division would provide expenses incurred by Division officials and employees at the Ohio Bankers Day seminar, then you should contact this Office for further advice.

Accordingly, under the facts that you have provided in your letter, R.C. 102.03(D) and (E) do not prohibit the Division from co-sponsoring the conference with a federal regulatory office, the OCC, or from having CSBS handle the contracts for facilities, the outside speakers, the meals, refreshments for breaks, and a reception. Also, R.C. 102.03(D) and (E) do not prohibit the Division from co-sponsoring the reception with a federal regulatory office, the OCC, and two trade organizations, the CBAO and the OBA.

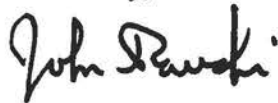
As a final matter, you state that it is expected that the OBA and CBAO will invite members of the General Assembly to attend the reception, and perhaps the conference program, but that no Division or Department funds will be used to pay the expenses incurred by the legislators. The Ethics Commission does not have jurisdiction over the members of the General Assembly. Questions concerning the attendance of, or provision of conference costs for, members of the General Assembly at the Ohio Bankers Day seminar should be directed to the Office of the Legislative Inspector General.

Conclusion

As explained above, under the facts that you have provided in your letter, the prohibitions imposed by the Ohio Ethics Law and related statutes do not prohibit the Division from co-sponsoring the Ohio Bankers Day seminar.

This informal advisory opinion was approved by the Ethics Commission at its meeting on September 26, 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.

Sincerely,

A handwritten signature in black ink that reads "John Rawski". The signature is written in a cursive style with a prominent initial "J".

John Rawski
Staff Attorney