



OHIO ETHICS COMMISSION

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June 12, 1998

Informal Opinion 1998-INF-0612

Lisa M. Crescimano, Clerk
Perkins Township

Dear Ms. Crescimano:

I am writing in response to your letter, in which you have asked whether emergency medical service (EMS) squad personnel, employed by the Perkins Township (Township) fire department, are prohibited by the Ohio Ethics Law from having private employment at area hospitals that provide emergency medical treatment.

As explained more fully below, the Ohio Ethics Law generally requires a public employee to withdraw, as a public employee, from any matters that involve his private employer, subject to the public employer's discretion. However, it is a practical impossibility for EMS employees to withdraw, in emergency situations, from participation in discretionary decisions affecting outside employers who are hospitals to which patients may be transported. Generally, the fact that EMS employees cannot withdraw from matters affecting their outside employers would effectively prevent EMS employees from seeking outside employment with area hospitals. Because of the unique nature of the situation you have described in Perkins Township, however, EMS employees may be able to hold outside employment with area hospitals if the Township itself chooses to establish objective criteria to limit possible conflicts of interest for the EMS employees in question. Some examples of the objective criteria that Perkins Township could establish are described more fully below.

Facts

You have stated that there are two hospitals in the Township area that provide emergency medical treatment. When a sick or injured person is unable to indicate their choice of hospital, the EMS squad personnel have the discretion to transport the person to either of the two hospitals for emergency medical treatment and care. You have asked whether the Ohio Ethics Law prohibits Township EMS squad personnel from having private outside employment with the two hospitals.

Use of Authority or Influence--R.C. 102.03(D)

The most relevant provision of the Ohio Ethics Law to the question that you have presented is R.C. 102.03(D), which states:

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.

The Ethics Commission has established that township officials and employees fall within the definitions of the term "public official or employee" for purposes of Chapter 102. of the Revised Code. Ohio Ethics Commission Advisory Opinion No. 92-010. A person employed by the township to provide EMS services is, therefore, a public employee subject to the prohibitions contained in R.C. 102.03(D).

The term "anything of value" is defined for purposes of R.C. 102.03 in R.C. 1.03 to include money and every other thing of value. R.C. 102.01(G). A definite and direct pecuniary benefit is considered to be a thing of value under R.C. 102.03(D). Adv. Op. No. 92-008. Employment and the compensation received therefor are also considered things of value for purposes of R.C. 102.03(D). Adv. Op. No. 96-004.

The Ethics Commission has consistently held that R.C. 102.03(D) prohibits a public official from using the authority or influence of his office to secure anything of value for himself. The Commission has also held that R.C. 102.03(D) prohibits a public official or employee from using the authority or influence of his office to secure anything of value for another person or entity, if the relationship between the two could impair the official's objectivity and independence of judgment with regard to public matters that affect that other person or entity. The Commission has stated that the relationship between a public official or employee and his outside employer is this type of relationship. In Advisory Opinion No. 89-008, the Ethics Commission stated:

An employer holds a position of power and authority over the hiring, compensation, discipline, and termination of its employees. A [public official] who is in the position of making an official decision regarding the pecuniary interests of his private employer would have an inherent conflict of interest impairing the [public official's] objectivity and independence of judgment.

Because of the nature of the employer-employee relationship, R.C. 102.03(D) prohibits a public official or employee from using the authority or influence of his office to secure anything of value for his private employer. Adv. Op. No. 96-004. Because a hospital charges fees for services, the decision by an EMS squad member to take emergency medical patients to the hospital that privately employs him would directly affect the pecuniary interests of the hospital, and would be prohibited by R.C. 102.03(D).

Withdrawal from Public Duties by Public Officials or Employees

The Ethics Commission has held that, in certain circumstances, a public official or employee may withdraw from consideration of matters that would pose a conflict of interest due to the prohibitions of R.C. 102.03(D). Id. The Commission has held that the withdrawal must not interfere with the official or employee's performance of his public duties, and must be approved by the appropriate officials at his employing agency. Id.

In discussing the withdrawal of a Department of Agriculture meat inspector with regard to his private outside business interests, the Commission held:

An employee of an administrative department of the state owes his responsibility to the exercise of the public trust by performing the tasks assigned to him by his employing agency. This duty must not be impaired by a public employee's concern for his own personal interests. In the instant situation, the Department of Agriculture employee has the responsibility to perform the duties of a meat inspector, as described above, at the locations to which he has been assigned by his superiors. There may be instances where a state agency is willing to accommodate the personal interests of its employees and excuse or reassign an employee with outside interests in order to avoid inherent conflicts of interests (*sic*) where the agency determines that such special consideration would not interfere with the agency's operations or work hardship upon other employees. The state agency's determination whether such action is possible or desirable is a matter within the discretion of the affected agency. If in the instant situation, the Department of Agriculture determines it is unable, or does not desire to make special arrangements to accommodate the employee's outside interests, it is under no obligation to do so All public employees must accept necessary restrictions to avoid any possible interference with the responsibilities of their public service.

Adv. Op. No. 89-010. The Commission has consistently held that the ability of a public official or employee to withdraw from public duties, where their private employer's interests are at issue, is subject to their public agency's discretion. In examining the situation that you have presented, the unique nature of providing emergency medical services would make withdrawal by the public employee difficult, if not impossible. The situations faced by EMS squad personnel will vary from day to day, and from situation to situation. There is no effective way for EMS squad personnel, who also hold private employment with an area hospital, to withdraw from a potential conflict of interest once they are at an emergency scene, and are faced with a patient who cannot indicate his hospital preference. It would appear, therefore, that EMS squad personnel are prohibited from holding private outside employment with area hospitals.

Establishing Objective Criteria

The Ethics Commission, however, recognizes the uniqueness of the situation in question in Perkins Township and the possibility of competing interests. The township and its citizens may benefit from employees who receive increased experience and training from their outside private employer. The township may receive better emergency medical treatment and care for citizens from employees that have health care experience and training, in addition to that which the township could have afforded to provide on its own. Because of these kinds of benefits, from the only two hospitals in the Perkins Township area, the Township may wish to allow EMS squad personnel to work for these two hospitals in their off-duty hours, subject to certain restrictions. The restrictions must reduce the likelihood, in these unique circumstances, that the interests of a private employer will supercede the needs of the critical patient.

First and foremost, the public official or employee's ability to engage in such outside employment is subject to their employing agency's discretion, as established in Advisory Opinion No. 89-010. If the outside employment will interfere with the agency's operations, or work a hardship upon other employees, the public agency is under no obligation to make accommodations to facilitate the public official or employee's outside employment.

Second, because withdrawal by the employee may be impossible in some situations, the public agency should establish objective criteria, against which the determination as to which hospital the patient will be transported will be measured. If objective criteria are established that effectively limit the authority or discretion on the part of the public official or employee, in determining which hospital to transport the patient, the conflict of interest may be removed and the potential for violating R.C. 102.03(D) is negated.

Some examples of objective criteria that Perkins Township can establish that would limit the authority or discretion on the part of the public official or employee in this situation could include policies regarding: transporting the patient to the hospital of his choice, where the patient is capable of communicating a choice; transporting the patient to the nearest hospital, considering weather and other road conditions; transporting the patient to the hospital that can best provide any necessary specialized treatment, such as taking injured children to the hospital that specializes in pediatrics; and transporting the patient to the hospital that can treat the patient in the most timely manner, such as the hospital with available resources at the time of the emergency. Perkins Township may include additional objective criteria that are relevant to the situation.

Finally, the public official or employee with the conflict of interest will still be required to withdraw from situations involving his private employer, the hospital, whenever it is possible. Where withdrawal is possible, the employee would be prohibited from actively using his position to secure a thing of value, such as patients, for his private employer. The conflict of interest is negated for the employee only when his public employer has agreed to the outside employment,

and established and implemented the objective criteria. The employee's failure to adhere to these restrictions will result in violations of the Ethics Law.

Conclusion

As explained above, the Ohio Ethics Law generally requires a public employee to withdraw, as a public employee, from any matters that involve his private employer, subject to the public employer's discretion. However, your question involves EMS employees, and it is a practical impossibility for EMS employees to withdraw, in emergency situations, from participation in discretionary decisions affecting their outside employers. Generally, the fact that EMS employees cannot withdraw from matters affecting their outside employers would effectively prevent the EMS employees from seeking outside employment with area hospitals. Because of the unique nature of the situation you have described in Perkins Township, however, the EMS employees may be able to hold outside employment with area hospitals if the Township chooses to establish objective criteria to limit the conflict of interest for EMS employees.

This informal advisory opinion was approved by the Ohio Ethics Commission at its meeting on May 15, 1998. It 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. It does not purport to interpret other laws or rules. If you have any additional questions, please contact this Office again.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sharon A. Mull". The signature is written in dark ink and is positioned above the typed name.

Sharon A. Mull
Staff Attorney