



OHIO ETHICS COMMISSION

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December 2, 1998

Informal Opinion 1998-INF-1202

Paul Walker, Legal Counsel
The Industrial Commission of Ohio

Dear Mr. Walker:

In a letter that was received by our office on June 16, 1998, you ask whether the Ohio Ethics Law and related statutes prohibit a member of the Industrial Commission from soliciting donations from private corporations, for the benefit of a non-profit organization that she serves as a member of its board of directors. Specifically, your question relates to whether some of the corporations solicited are or may become parties in contested workers' compensation claims that are set for hearing under the regulative authority of the Industrial Commission.

As explained above, R.C. 102.03(D) and (E) prohibit a member of the Industrial Commission who serves as a member of the board of directors of a non-profit organization from soliciting or accepting a contribution for the organization from any party that is regulated by or interested in matters before, the Industrial Commission.

Facts

You state that a member of the Industrial Commission serves as a member of the board of directors of Women Executives in State Government, (WESG). You state that WESG is a national, non-profit, non-partisan organization that provides education and training for elected and appointed officials in the executive branch of state government. You have explained that WESG offers its members top level educational programs on managing government agencies and becoming more effective leaders. You have stated that WESG notes that its programs would not be possible without the support and commitment of its corporate sponsors. You state that corporate sponsors or foundations provide approximately 59% of WESG's income and that, in 1996, membership dues accounted for only 5% of WESG's income. WESG offers only individual memberships. The Industrial Commission pays the membership dues for its member and reimburses her for expenses incurred at WESG's meetings.

You state that the member of the Industrial Commission who serves as a member of WESG's board of directors is also the chair of WESG's host committee for its annual meeting. WESG's 1999 annual meeting will be held in Ohio. The host committee solicits corporate sponsors for the support of WESG, its programs, and its annual meeting. You state that some of the corporate sponsors may be parties in contested workers' compensation claims that are set for hearing before the Industrial Commission.

Conflict of Interest Provisions Set Forth in R.C. 102.03(D) and (E)

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

- (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.

R.C. 102.01(B) defines a "public official or employee" for purposes of R.C. 102.03 as "any person who is . . . appointed to an office . . . of any public agency." R.C. 102.01(C) defines the term "public agency" to include any commission of the state. The Industrial Commission is a statutorily created commission of the state responsible for ascertaining, ordering, and enforcing standards which safeguard the life, health, safety, and welfare of employees and frequenters of places of employment. R.C. 4121.02 and 4121.13. Thus, members of the Industrial Commission are "public officials or employees" who are subject to the prohibitions of Section 102.03 of the Revised Code. Ohio Ethics Commission Advisory Opinion No. 89-002.

R.C. 1.03 defines "anything of value" for purposes of R.C. 102.03 to include money, goods and chattels, and every other thing of value. R.C. 102.01(G). A definite pecuniary benefit is considered to be a thing of value under R.C. 102.03. Adv. Ops. No. 85-011 and 86-007. The financial support that WESG would receive from corporate sponsors for the support of its programs and its annual meeting fall within the definition of "anything of value" in R.C. 1.03.

The Ethics Commission has consistently held that R.C. 102.03(D) and (E) prohibit a public official or employee from accepting, soliciting, or using her position to secure anything of value where the thing of value is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to her duties. Adv. Ops. No. 86-003, 86-007, and 88-004. The prohibition 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 that may impair the objectivity and independence of judgment of a public official or employee, and, therefore, the effectiveness of the public agency with which she serves. Adv. Ops. No. 89-014 and 90-002.

The Ethics Commission has held that R.C. 102.03(D) and (E) prohibit a public official or employee from accepting, soliciting, or using her position to secure anything of value from a party that is interested in matters before, regulated by, or doing or seeking to do business with,

the agency with which the official or employee serves. Adv. Ops. No. 80-004, 84-010, and 86-011. Conversely, 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 anything of value to an official or employee of that agency. Adv. Op. No. 87-005 and 90-001.

Solicitation of Contributions on Behalf of Non-Profit Organization

The Ethics Commission has held that the thing of value need not be secured for the benefit or use of the public official or employee herself. The prohibitions in R.C. 102.03(D) and (E) also apply where the thing of value accrues, as a result of the public official's or employee's action, to a party that has a close familial, economic, or fiduciary relationship with the public official or employee. In Advisory Opinion No. 93-003, the Ethics Commission held:

R.C. 102.03(D) prohibits a public official or employee from using his authority or influence to secure anything of value, not only for himself, but for members of his family (see Advisory Opinion No. 92-012), for his business associates, (see Advisory Opinions No. 88-004 and 88-005), for a professional organization on which the public official or employee serves as a board member (see Advisory Opinion No. 90-012), [and] for his private outside employer (see Advisory Opinion No. 91-004). (Emphasis added).

Because the member of the Industrial Commission serves as a member of the board of directors of WESG and on WESG's host committee, a close fiduciary relationship exists between WESG and the member of the Industrial Commission.

In your letter, you state that some of the potential donors may become parties in contested workers' compensation claims that are set for hearing before the Industrial Commission. Therefore, a clear regulatory connection exists between the Industrial Commission and any of these potential corporate sponsors who have contested workers' compensation claims set for hearing before the Industrial Commission. A potential corporate sponsor that is a party to a contested claim pending before the Industrial Commission is also "interested in" a matter before the Industrial Commission within the meaning of the Ethics Commission's advisory construction of R.C. 102.03.

A potential corporate sponsor is regulated by and interested in matters before the Industrial Commission even in the absence of a contested workers' compensation claim. The Industrial Commission regulates places of employment in Ohio regarding all matters of safety, with the responsibility to ascertain, order, and enforce standards to safeguard the life, health, safety, and welfare of employees and frequenters of places of employment. See generally R.C. 4121.13. To accomplish these responsibilities, the Industrial Commission may "[a]scertain, fix, and order such reasonable standards for the construction, repair, and maintenance of places of

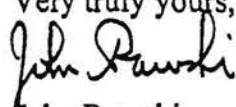
employment as shall render them safe." R.C. 4121.13(C). Employers are prohibited from violating a specific safety rule of the Industrial Commission, or act of the General Assembly. R.C. 4121.47(A). The Industrial Commission may, in the course of determining Workers' Compensation claim, find that an employer violated a specific safety rule of either the Industrial Commission or act of the General Assembly and, in addition to the award paid the claimant, order the employer to correct the violation and, in some instances, assess civil penalties up to fifty thousand dollars against the employer. R.C. 4121.47(B). Thus, every employer doing business or with a workplace in the state of Ohio is a party that is regulated by and interested in matters before the Industrial Commission.

Because of the close fiduciary relationship between WESG and the member of the Industrial Commission, donations from regulated or interested parties for WESG could therefore affect the objectivity or independence of judgment of the member of the Industrial Commission, and thus, be of such a character as to improperly influence her with respect to her duties. Adv. Ops. No. 87-004, 88-004, and 88-005. Accordingly, R.C. 102.03(D) and (E) prohibit a member of the Industrial Commission who serves as a member of the board of directors of a non-profit organization from soliciting or accepting a contribution for the organization from any party that is regulated by, or interested in matters before, the Industrial Commission, including every employer doing business or with a workplace in Ohio.

Conclusion

As explained above, R.C. 102.03(D) and (E) prohibit a member of the Industrial Commission who serves as a member of the board of directors of a non-profit organization from soliciting or accepting a contribution for the organization from any party that is regulated by or interested in matters before, the Industrial Commission. As a final matter, it must be noted that this advisory opinion addresses a unique situation due to the extremely broad regulatory authority of the Industrial Commission over places of employment in Ohio. The conclusion of this advisory opinion is based and dependent entirely on the role of the Industrial Commission and the duties of its members.

This informal advisory opinion was approved by the Ethics Commission at its meeting on October 29, 1998. 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