

OHIO ETHICS COMMISSION

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July 27, 2001

Informal Opinion 2001-INF-0727-1

Priscilla J. Blanchard
Director of Public Works
City of Hudson



Dear Ms. Blanchard:

In a letter received by the Ethics Commission on March 26, 2001, you state that you are the Director of the Public Works Department (Department) for the City of Hudson, Ohio (City). You ask whether the Ethics Law and related statutes prohibit you from appointing your son to the position of a part-time, in your words, "unpaid intern," to work on the Department's Web site for six weeks during the summer. You state that your son is majoring in applied mathematics and computer applications as an undergraduate student at Kent State University. You also state that he would not receive college credit for working on the Department's Web site as a part-time unpaid intern but he would be able to include it as experience on his resume. You state that your son does not live with you.

Brief Answer

As explained below, you are prohibited from appointing your son to the position of a part-time unpaid intern to work on the Department's Web site.

Securing Anything of Value—R.C. 102.03(D)

Division (D) of R.C. 102.03 reads as follows:

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 term "public official or employee" is defined for purposes of R.C. 102.03 to include any appointed official or employee of any "public agency." R.C. 102.01(B). The term "public agency" is defined to include any institution or instrumentality of a city. R.C. 102.01(C). Therefore, as a City employee, you are subject to the prohibitions imposed by R.C. 102.03(D) and (E). See generally Ohio Ethics Commission Advisory Opinion No. 90-010.

Prohibition Imposed by R.C. 102.03(D)—Securing a Thing of Value for a Family Member

As explained below, a public official or employee does not need to secure a thing of value for himself to invoke the prohibition imposed by R.C. 102.03(D). When originally enacted, R.C. 102.03(D) prohibited a public official or employee from using his official position to secure anything of value for himself "that would not ordinarily accrue to him in the performance of his official duties, which thing is of such character as to manifest a substantial and improper influence upon him with respect to his duties." The Ethics Commission determined that this language prohibited a public official or employee from participating in matters that would benefit the public official's or employee's own interests. Adv. Ops. No. 79-003, 80-007, and 85-006. However, in 1986, the General Assembly deleted the requirement that the thing of value not ordinarily accrue to the public official or employee in the performance of his official duties, thereby broadening the scope of the prohibition imposed by R.C. 102.03(D). Adv. Op. No. 88-004.

Therefore, R.C. 102.03(D) prohibits a public official or employee from participating in some matters even if the official or employee does not derive a personal benefit for himself. Adv. Op. No. 88-004. However, R.C. 102.03(D) still requires that the thing of value, whether it is secured for the official or for another person or entity, be of such a character as to manifest a substantial and improper influence upon the official with respect to his duties. Id.

The Ethics Commission has concluded that R.C. 102.03(D) prohibits a public official or employee from participating in matters that will benefit persons or entities with whom he has a close family, economic, or business relationship because the relationship may impair the public official's objectivity and independence of judgment. Adv. Ops. No. 88-004, 89-008, and 97-002. For example, in Advisory Opinion No. 88-004, the Commission held that R.C. 102.03(D) prohibits a city council member from voting, deliberating, participating in discussions, or otherwise using his official authority or influence with regard to any matter that would provide a definite and particular pecuniary benefit or detriment to property owned by a business associate, because the official's relationship with his business associate could impair the council member's objectivity and independence of judgment.

With respect to family members, the Ethics Commission has specifically stated that R.C. 102.03(D) prohibits a public official or employee from using his authority or influence, formally or informally, to secure anything of value for members of the official's or employee's family. See Adv. Ops. No. 89-008 (spouse and children), 90-004 (spouse), 91-004 (spouse), 92-012 (spouse), 97-004 (children), and 98-002 (brothers and sisters). Therefore, R.C. 102.03(D) prohibits you from using your public position to secure anything of value for your son.

The issue becomes whether a position as a part-time unpaid intern for six weeks during the summer, in the City Department that you serve as Director, falls within the definition of "anything of value" for purposes of the prohibition imposed by R.C. 102.03(D).

Anything of Value

The term "anything of value," when used in a penal statute, is defined in R.C 1.03, which reads as follows:

As used in any section of the Revised Code for the violation of which there is provided a penalty or forfeiture, unless the context otherwise requires, "anything of value" includes:

- (A) Money, bank bills or notes, United States treasury notes, and other bills, bonds, or notes issued by lawful authority and intended to pass and circulate as money;
- (B) Goods and chattels;
- (C) Promissory notes, bills of exchange, orders, drafts, warrants, checks, or bonds given for the payment of money;
- (D) Receipts given for the payment of money or other property;
- (E) Rights in action;
- (F) Things which savor of the realty and are, at the time they are taken, a part of the freehold, whether they are of the substance or produce thereof or affixed thereto, although there may be no interval between the severing and taking away;
- (G) Any interest in realty, including fee simple and partial interests, present and future, contingent or vested interest, beneficial interests, leasehold interests, and any other interest in realty;
- (H) Any promise of future employment;
- (I) Every other thing of value. (Emphasis added.)

It must be determined whether a position as a part-time unpaid intern to work on the Department's Web site to garner experience that could be included on a resume is a "thing of value" for purposes of the prohibition imposed by R.C. 102.03(D).

The interpretation of a statute must give effect to the plain meaning of the words employed in the statute. R.C. 1.42. The expansive phrase "every other thing of value" included in the definition of "anything of value" contained in R.C. 1.03 indicates a legislative intent to protect the public interest by allowing broad application of the phrase in R.C. 102.03(D) and other statutes. See R.C. 102.03(E) and (F); see also 731.36 (protecting the integrity of the petitioning process for municipal election referendums); 2915.05 (protecting the honesty of

athletic and sporting events); and 2921.21 (protecting the criminal prosecution process and integrity of witnesses). In addition, the Ethics Commission has, in its application of the Ethics Law to particular circumstances, followed the judicial dictate of the Ohio Supreme Court in City of Mentor v. Giordano, 9 Ohio St. 2d 140, 144 (1967) that statutes "must be construed in light of the mischief they are designed to combat." Adv. Op. No. 89-001.

In Advisory Opinion No. 76-005, the Ethics Commission interpreted the inclusion of the phrase "thing of value" in the prohibition of R.C. 102.03(D) for the first time, and held:

The Ohio Supreme Court, in Scott v. State, 107 Ohio St. 475, 486 (1923), defined "thing of value" as used in a criminal bribery statute by relying on the Webster's International Dictionary definition of value:

"The property or aggregate properties of a thing by which it is rendered useful or desirable."

In the same case the court went on to say that a thing of value need not be generally desirable, but only desirable to the person or persons in question. Thus, whether a valuable thing or valuable benefit is involved is a question of fact turning on the desirability of the thing or benefit in question to the public official or employee who may attempt to secure it.

However, as explained above, R.C. 102.03(D) no longer requires that the public official or employee derive a personal benefit for himself from his participation in an official matter in order to show a violation of R.C. 102.03(D).

The Attorney General also used the standard established by Scott in Attorney General Advisory Opinion No. 96-033, in which she held:

[T]he court interpreted "value," in the context of a penal statute, as having a subjective element, and requiring assessment on a case-by-case basis. Necessarily implicit in the Scott standard is a requirement that the thing of value be concrete, ascertainable and directed towards a specific person or persons. (Emphasis added).

Thus, the Attorney General concluded that a professor's award of extra credit to a student who votes in an election would be providing a thing of value to induce a person to vote in violation of R.C. 3599.01 and 3599.02. This conclusion was reached by determining that the receipt of extra credit is valuable to a student because a high grade point average can be critical to a successful career or, if no grades are given, aid in the achievement of a required minimum level of performance to receive credit for the class.

In this instance, the question of fact turns on the desirability of the thing or benefit in question—a position as an unpaid intern—to your son.

As a college student anticipates completion of a specialized field of study and entry into the job-market, any relevant employment, whether compensated or not, would aid in his professional development. A graduate who can demonstrate a possession of knowledge resulting from both classroom theory and practical “real-world” experience would be an attractive applicant to a prospective employer or client. Because practical experience can be critical to achieving a successful, lucrative, and prestigious career after college, a monetary consequence can be attributed to being appointed to a position as an intern, despite the fact that the position is unpaid.

It should be noted that this is not a situation where a person is providing an altruistic volunteer service to a public agency. Instead, in the situation you have described, a person who performs the duties as an intern, albeit unpaid, would secure a valuable benefit. In Advisory Opinion No. 90-003, the Ethics Commission addressed the issue of a school board member who owned a music store donating goods or services to his school district. The Commission advised the school board member that he was prohibited from receiving any pecuniary gain from the donation and from using the donation to secure anything of value for himself, by stating:

[Y]ou may not use the instruments donated to the school as demonstration instruments to persuade parents or others to purchase similar merchandise from your store. Further, you are prohibited from mentioning the donations or the sponsorship arrangements in advertisements for your shop.

As explained above, it is not necessary that the public official secure the thing of value for herself. In the instant situation, as stated above, your son desires the position as an unpaid intern to work on the Department’s Web site for six weeks. You note that your son can include the service as experience on his resume. The use of such experience on his resume would be a benefit to your son akin to the benefit that could accrue to the official in Advisory Opinion No. 90-003 by mentioning his donations to the school district in advertisements for his shop. Therefore, it is clear that the facts and circumstances of a particular situation will determine whether an unpaid provision of services to a public agency falls within the definition of “anything of value” for purposes of R.C. 102.03(D). See Adv. Op. No. 87-008 (the application of R.C. 102.03(D) is dependent upon the facts and circumstances of each individual situation).

Also, in the instant situation, you have stated that the part-time intern position will have a duration of only six weeks during the summer and will involve working on the Web site of the City department that you serve as Director. This fact strongly suggests that serving as an intern in this position for a limited time for a particular purpose is not the mere provision of general altruistic volunteer service to a public agency that can be offered by any citizen but is an arrangement that is more analogous to a position of public employment with a strictly defined duty granted by an appointing authority to a particular individual.

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Therefore, due to the facts and circumstances of this particular situation, the position as a part-time unpaid intern of six weeks duration to work on the Department's Web site to garner experience that could be included on a resume meets the standard set forth by the Ohio Supreme Court in Scott v. State by being a concrete, ascertainable thing of value directed towards a specific person and thus, falls within the definition of "anything of value" for purposes of the prohibition imposed by R.C. 102.03(D).

Conclusion

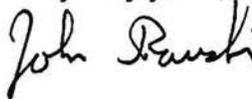
As explained above, you are prohibited from appointing your son to the position of a part-time unpaid intern to work on the Department's Web site.

It must be noted that while you are prohibited from using your official authority or influence to secure the internship position for your son, your son is not prohibited from volunteering his time and expertise to the City. Volunteer service to the community is always laudable. The Ethics Law does not prohibit your son from pursuing, on his own behalf, other volunteer opportunities, or internships with the City, where your authority or influence is not required for his appointment to such a position, and you do not use your position in any fashion or participate in any manner to assist his consideration for the position.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on July 27, 2001. The Commission commends you for requesting an advisory opinion before taking any actions that could be prohibited by the Ethics Law.

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 questions or desire additional information, please contact this Office again.

Very truly yours,



John Rawski
Staff Attorney