

OHIO ETHICS COMMISSION

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November 21, 2001

Informal Opinion 2001-INF-1121

Donald B. Shackelford, Chairman
Columbus/Franklin County Affordable Housing Trust Corporation

Dear Mr. Shackelford:

In your November 7, 2001 letter to the Chairman of the Ohio Ethics Commission, you have asked for guidance about the application of the Ohio Ethics Law to the Columbus/Franklin County Affordable Housing Trust Corporation (the Corporation) and the funding of conference, travel, and meal expenses related to the mission of the Corporation. You have stated that the Corporation does not wish to use public money to defray these expenses. The Corporation board wishes to obtain funds for the expense account from a private source, such as a foundation.

Brief Question

You have asked whether it would be appropriate, within the scope of the Ohio Ethics Law and related statutes, for the Corporation to solicit and accept funds from private sources for conference, travel, and meal expenses related to the mission of the Corporation.

Brief Answer

Following the assumption that the Corporation is a public entity, its officers and employees are public officials and employees subject to the Ohio Ethics Law. Based on the unique situation you have set forth, the Ohio Ethics Law and related statutes do not prohibit officials and employees of the Corporation from soliciting or accepting donations to the expense account for the purposes and in the specific manner you have described, as discussed more fully below. However, the Ethics Law does impose limits upon the activities of Corporation officials and employees with respect to the parties from whom the Corporation may solicit and the donations it may accept.

Facts

By way of history, you have explained that:

- (1) The Corporation was jointly created by the City of Columbus (City) and Franklin County (County). The Corporation has applied for approval of its status as a non-profit corporation for purposes of Section 501(c)(3) of the Internal Revenue Service (IRS) Code of 1986. According to the documents you attached to your letter, the eleven members of the Corporation board are appointed jointly by the County and the City mayor. The board members are not compensated for their service to the Corporation, but may be reimbursed, with the prior approval of the board, for out-of-pocket expenses related to the board's business. The board is required to employ an Executive Director, who may employ other staff with the consent and approval of the majority of the board;
- (2) The Corporation performs services pursuant to a contract with the County. The Corporation uses the funds provided to it to stimulate the production, utilization, and preservation of affordable housing with the County. In the course of performing these duties, the Corporation will need to meet with housing developers, landowners, builders, and sources of financing. The Corporation will use its fund to make loans, investments, and invest in land, housing structures, and developments; and
- (3) In order to perform these described functions of the board, the Corporation would like to establish an expense account to defray the costs of meals and meetings with builders, developers, and other housing related personnel. The expense account will also be used for travel to seek financial resources beyond those provided by the City and County. Finally, the expense account may be used to provide for Corporation personnel to travel to conferences regarding sources and funds for affordable housing. The Corporation would like to seek funds for the expense account from a private source, such as a foundation

Application of the Ohio Ethics Law

The Commission's answer is dependent on the character of the Corporation as a public agency. The Ohio Ethics Law and related statutes prohibit public officials and employees from engaging in certain activities. Public officials and employees are individuals who are appointed to offices of, or employed by, public agencies. An agent of the state or a political subdivision, or a person performing governmental functions, is also a public official subject to some provisions of the Ethics Law.

Based on your letter, and assuming that the Corporation is a public entity, its officers and employees are public officials and employees subject to the Ohio Ethics Law. The situation you have set forth is unique in that the Corporation is not being offered travel expenses in connection with a specific event, or the performance of specific duties by its public officials and employees.

Rather, the Corporation wishes to solicit a grant or other funding to create an expense account from which travel and other entertainment expenses will be paid generally, without regard to a specific matter, decision, or project.

Because of the unique nature of the situation you have set forth, the Ohio Ethics Law and related statutes do not prohibit officials and employees of the Corporation from soliciting or accepting donations to the expense account for the purposes you have described. See Ohio Ethics Commission Advisory Opinion No. 89-002 (a public agency is not prohibited from accepting a donation within certain parameters). However, the Ethics Law does impose limits upon the activities of Corporation officials and employees with respect to the solicitation or use of the resources.

For example, the conflict of interest provision set forth in R.C. 102.03(E) prohibits a public official or employee from soliciting or accepting anything of value that can have a substantial and improper influence on the official or employee with respect to the performance of his duties. The Commission has previously concluded that this section prohibits a public official or employee from accepting benefits such as personal travel expenses from any party that is doing or seeking to do business with, regulated by, or interested in matters pending before the public agency he serves. Adv. Ops. No. 89-012 and 89-014. Therefore, R.C. 102.03(E) would prohibit the officials and employees of the Corporation from underwriting the expense account in the manner that you describe, if the money were to be provided by any party that is doing or seeking to do business with, regulated by, or interested in matters before, the Corporation. See also R.C. 102.03(F) (which applies to the person or entity that is the source of the travel expenses). For example, the Corporation would be prohibited from soliciting or accepting funds for the expense account from builders who may be competing for funding from the Corporation.

In reviewing your prospective question with the Commission Chairman, you have related that a likely source of the funds is a foundation that does not have direct matters or interests before the Corporation. Such a foundation would not be a prohibited source of the funds so long as the foundation is not doing or seeking to do business with, regulated by, or interested in matters pending before the Corporation.

You should also note R.C. 2921.43(A), which prohibits a public servant from soliciting or accepting, and any person from promising or giving to a public servant, supplemental compensation for the performance of the public servant's duties. R.C. 2921.43(A) would prohibit Corporation officials and employees from soliciting or accepting any offer of money, including travel expenses, that is, or is intended to be, compensation for the performance of their job duties.

For example, if Corporation officials and employees were required to travel to a meeting with a developer who might provide services to the Corporation, R.C. 2921.43(A) would prohibit the officials and employees from accepting any offer of the developer to cover the travel expenses of the officials and employees. See Adv. Op. No. 89-014. However, R.C. 2921.43(A) would not prohibit the Corporation from accepting grant or other money from a party that is not doing or seeking to do business with, interested in matters pending before, or regulated by, the

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Corporation, if the money is intended to generally cover travel and entertainment expenses of the Corporation, without being directed at any specific individual's travel or entertainment expenses related to the performance of his or her job duties.

Because any donations to such a travel expense fund are used to further a public purpose, the Corporation must assure that it has the authority to receive such donations and must carefully document the acceptance of donations to and expenditures from the fund. To adhere to the standard of law and avoid any appearance of impropriety, it must also be clear that any money expended is necessary for the purpose described, and that expenditures are not excessive in character. Further, the Corporation should be aware of, and adhere to, other limits on conflicts of interest contained in the Ohio Ethics Law and in guidelines for 501(c)(3) non-profit corporations.

The Ohio Ethics Commission approved the conclusions in this response to your question at its meeting on November 16, 2001. The Commission commends you and the Corporation for requesting guidance before taking any actions that could be prohibited, and appreciates your awareness of a significant internal issue affecting the Corporation's public responsibility.

The response is based on the facts presented and is limited to questions arising under Chapter 102. and Sections 2921.42 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 feel free to contact the Commission again.

Sincerely,



Jennifer A. Hardin
Chief Advisory Attorney