

# OHIO ETHICS COMMISSION

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December 14, 2001    Informal Opinion 2001-INF-1214-3

David F. Baits, Ph.D.  
Superintendent  
Cedar Cliff Local School District

Dear Dr. Baits:

In a letter received by the Ohio Ethics Commission on October 2, 2001, you have asked whether the Ethics Law and related statutes prohibit various parties from paying the travel expenses and amusement park admissions for the minor children of the school band director to accompany the band to an event at Walt Disney World.

### Brief Answer

The Ethics Law and related statutes prohibit the band director from accepting, from the tour company, the music boosters, and any other parties, and prohibit such parties from providing to the band director, the payment of travel and related expenses on behalf of the band director's minor children regardless of whether the payment is made directly to the band director or "absorbed" through the school district's contract with the tour company. The law does not prohibit the band director from paying the travel and related expenses incurred by his minor children out of his own funds.

### Facts

In your letter to the Ethics Commission, you explain that the Cedar Cliff High School Band (band) takes a major trip every four to five years. You also explain that in March 2002, the band will march in a parade and will be involved in music workshops at Disney World. You state that the band director is responsible for the trip.

You explain that the tour company provides a certain number of complimentary entrances to Disney World for each given number of paying participants. You ask whether the Ethics Law prohibits the band director's minor children from receiving complimentary passes that are provided pursuant to the Tour Agreement. You also ask whether the Ethics Law prohibits the music boosters from paying the travel and related expenses of the band director's minor children.

**Receiving Compensation From Tour Company—R.C. 2921.43(A)(1)**

The situation you have described implicates R.C. 2921.43(A)(1), which provides the following:

- (A) No public servant shall knowingly solicit or accept and no person shall knowingly promise or give to a public servant either of the following:
  - (1) Any compensation, other than as allowed by divisions (G), (H), and (I) of section 102.03 of the Revised Code or other provisions of law, to perform his official duties, to perform any other act or service in the public servant's public capacity, for the general performance of the duties of the public servant's public office or public employment, or as a supplement to the public servant's public compensation;

A public school administrator, official, or employee, including any teacher, regardless of his or her duties and responsibilities, is a "public servant" as defined by R.C. 2921.01(B), and, as such, is subject to the prohibition of R.C. 2921.43(A)(1). See Adv. Op. No. 93-017. Therefore, the band director is a "public servant" subject to the prohibition of R.C. 2921.43(A)(1).

R.C. 2921.43(A)(1) prohibits a public servant from accepting any compensation, other than as allowed by R.C. 102.03(G)-(I) or other provision of law, to perform any act in his public capacity or generally perform the duties of his public position. See Adv. Op. No. 90-001. R.C. 2921.43(A)(1) also prohibits any person from promising or giving to a public servant any such outside compensation. Adv. Ops. No. 89-014 and 90-001. The exceptions set forth in R.C. 102.03(G) through (I) are not applicable in the instant situation.

The word "compensation" is not defined for purposes of R.C. 2921.43. In Advisory Opinion No. 92-014, the Ethics Commission held:

A primary rule of statutory construction is that words used in a statute must be construed according to rules of grammar and common usage. See R.C. 1.42. Furthermore, statutes "must be construed in the light of the mischief they are designed to combat." City of Mentor v. Giordano, 9 Ohio St. 2d 140, 144 (1967). "Compensation" is defined as "payment for services: esp., wages or remuneration." See Webster's New World Dictionary 289 (2nd College Ed. 1972).

See also State v. Livesay, 91 Ohio Misc. 2d 208 (C.P. Jackson County, February 19, 1998) (the use of the word "compensation" in R.C. 2921.43(A) requires an exchange of a thing in return for some obligation).

R.C. 2921.43(A) prohibits a public servant from accepting any item, and any person from promising or giving a public servant any item, including a gift of substantial value, that is intended to be provided in exchange for the performance of the public servant's public duties. For example, a vendor's payment of travel expenses of a school district official or employee in return for the performance of a particular duty, act, or service that the school district official or employee is required to perform, or for the general performance of the duties of the school district official or employee, is consideration in the form of free travel provided to a school official or employee for performing his or her public duties. Adv. Ops. No. 89-013 and 2001-03. See also State v. Capko, Cuyahoga App. No. 56814, unreported, 1990 LEXIS 1287 (March 28, 1990).

You have asked whether the band director is prohibited from accepting free travel and entertainment passes, on behalf of his minor children, from the tour company. In Advisory Opinion No. 2000-04, the Commission stated that R.C. 2921.43(A)(1) prohibits public school teachers, administrators, and other public school officials and employees from accepting the payment of monetary compensation from a private tour company for performing duties related to school field trips. However, the Commission further stated that the agreement between the tour company and the school district could include the express requirement that when the school district and its students purchase a specified number of tours, the private tour company will cover the essential travel expenses for a specified number of school personnel to accompany the students on the trip. If such a provision were included in the agreement, school teachers, administrators, and other public school officials and employees could accept the travel expenses from the private tour company. The Commission emphasized that it must be clear that the travel expenses covered by the private tour company are limited to the amount that is essential for the school personnel to accompany the students. In this regard, the Commission stated the following:

The accommodations and meals provided to the school personnel cannot be substantially different from those provided to the students. School personnel also cannot accept travel or expenses for any purpose that is unrelated to the school trips where they are accompanying students. It must be clear that the trip is part of the overall educational mission performed by the district and that it serves an educational purpose for students to undertake the travel. Finally, a school teacher would be prohibited from using his or her position to secure free travel, as a chaperone, for a family member, such as a spouse. If a family member were to accompany a teacher on these trips, the teacher or family member would be responsible for covering any expenses (such as airfare, extra lodging charges, and meals) attendant to the family member's travel with the group. (Emphasis added).

Thus, the Commission recognized a narrow exception to the prohibition of R.C. 2921.43(A)(1) where the tour company provided free travel to allow essential school personnel to accompany students on a school trip. The Commission did not, however, extend this narrow exception to allow a tour company to provide free travel, either directly or indirectly through the contract with the school district, for the family members of the teachers or other public school officials and employees. Therefore, R.C. 2921.43(A)(1) prohibits the band director from

accepting free travel and payment of related expenses on behalf of his minor children, either directly or absorbed in the cost of the trip through the contract, from the tour company. R.C. 2921.43(A)(1) also prohibits the tour company from directly or indirectly providing free travel and payment of related expenses for the band director's minor children. See Adv. Op. No. 89-013.

**Having an Interest in a School Contract—R.C. 2921.42(A)(4)**

R.C. 2921.42(A)(4) is also applicable to the situation presented to the Commission. R.C. 2921.42(A)(4) provides that no public official shall knowingly:

Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which he is connected.

The term "public official" is defined to include "any elected or appointed officer, or employee, or agent of . . . any political subdivision." R.C. 2921.01(A). The band director is a "public official" for purposes of the prohibition of R.C. 2921.42(A)(4). Adv. Op. No. 2000-04.

The term "public contract" is defined, for purposes of R.C. 2921.42, in Division (G)(1)(a) of that section, to include the purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of the state, any of its political subdivisions, or any agency or instrumentality of either. Thus, the acquisition of tour services by the school district is a public contract. Adv. Op. No. 2000-04.

R.C. 2921.42(A)(4) prohibits a member of a public body from having a personal financial or fiduciary interest in the profits or benefits of a public contract entered into by a political subdivision or governmental agency or instrumentality with which he is "connected." A band director is connected with the school district by which he is employed for purposes of R.C. 2921.42(A)(4). Adv. Ops. No. 87-002 and 2000-04. Therefore, R.C. 2921.42(A)(4) prohibits the band director from having a personal interest in the acquisition of tour services by the school district.

If the band director were to accept free travel or the payment of travel and related expenses on behalf of his minor children for performing any of the duties associated with the school trip, from a private tour company, he would have a prohibited interest in the public contract, unless compliance with each of the four requirements of the exception of R.C. 2921.42(C) could be demonstrated. See Adv. Op. No. 93-008 (a minor child does not have the statutory right to enter into contracts independently of his or her parents). See also 1931 Ohio Op. Att'y Gen. No. 3200, vol. I, p. 624 at 625 ("there does not exist a pecuniary interest between a father and son except where the son is a minor and the father is charged with the duty of support") (emphasis added). It is unnecessary to discuss the exception, however, because R.C. 2921.43(A)(1) prohibits the band director from accepting any form of compensation, including the payment of travel and related expenses incurred by his minor children, from a private tour company for performing any duties associated with the school trip. Therefore, even if the band

director could demonstrate compliance with each of the four requirements of the exception to R.C. 2921.42(A)(4), R.C. 2921.43(A)(1) prohibits the band director from accepting any form of compensation, including the payment of travel and related expenses incurred by his minor children, from a private tour company for performing any duties associated with the school trip.

**Soliciting or Accepting an Improper Thing of Value—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.

The term "public official or employee" is defined for purposes of R.C. 102.03 to include any person who is an employee of any public agency. See R.C. 102.01(B) and (C). The Commission has held that, with the exception of teachers, instructors, professors, or other kinds of educators whose positions do not involve the performance of, or authority to perform, administrative or supervisory functions, every official and employee of every school district in the state is considered a "public official or employee" as that phrase is defined in R.C. 102.01(B). See Adv. Ops. No. 93-017 and 2000-04. Further, any teacher or other kind of educator whose position involves the performance of, or authority to perform, any duties that involve managing or directing the activities of the school district or other school employees, or supervising other school employees, is a "public official or employee" for purposes of R.C. 102.01(B). See Adv. Op. No. 93-017. Examples of teachers whose duties include administrative or supervisory activity include an educator who is the head of an academic department, and who establishes the curriculum, teaching activities, or other matters for the department, or an instructor who acts as an athletic coach or band director, and supervises the activities of assistants. Adv. Op. No. 2000-04. Therefore, the band director is a "public official or employee" subject to the prohibitions of R.C. 102.03(D) and (E).

The term "anything of value" is defined, for purposes of R.C. 102.03, to include money, goods and chattels, and every other thing of value. R.C. 1.03; 102.01(G). The Ethics Commission has stated that an expense-paid trip is within the definition of "anything of value." Adv. Ops. No. 89-014 and 2000-04.

**Substantial and Improper Influence**

The question becomes whether an expense-paid trip, in the situation you have described, is of such a character as to manifest a "substantial" and "improper" influence upon the band director with respect to his duties. In Advisory Opinion No. 86-011, the Commission held that,

when determining whether anything of value could have an improper influence upon a public official or employee with respect to the performance of his duties, the focus is primarily on the source of the thing of value. Id. The Commission held that the question of whether the gift could have a "substantial" influence depends on the nature of the thing of value. Id. Therefore, in the instant situation, the Commission must examine both the source and the nature of a gift offered to a public official or employee.

### **Source and Nature of Anything of Value**

With regard to the source of the thing of value, the Commission has consistently held that anything of value could have an improper influence on a public official or employee if it is provided to the official or employee by a party that is interested in matters before, regulated by, or doing or seeking to do business with the public official's or employee's agency. See Adv. Ops. No. 84-010, 89-013, 90-001, and 95-001. The Commission explained in Advisory Opinion No. 84-010 that:

The receipt of something 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 public official or employee serves is of such character as to manifest a substantial or improper influence upon the public official or employee with respect to his official duties, because it could impair his independence of judgment in the performance of his duties and affect subsequent decisions in matters involving the donor of the thing of value.

The Commission has consistently held that a public official or employee is prohibited from accepting a substantial thing of value from any of these improper sources. See Adv. Ops. No. 86-011, 89-002, and 89-013. For instance, in Advisory Opinion No. 2000-04, the Ethics Commission concluded that a school district official or employee is prohibited from receiving any substantial personal financial benefit from a school trip company that does business with his school district.

In the instant situation, the question is whether the band director can accept, on behalf of his minor children, the payment of trip expenses from the tour company or music boosters. As stated above, the band director is responsible for performing the administrative duties associated with the trip. Also, if the tour company were to pay the trip expenses of the band director's children, or if the band director's children were to travel at no cost, the band director would receive a direct substantial financial benefit. Therefore, R.C. 102.03(E) prohibits the band director from accepting, on behalf of his minor children, the payment of travel expenses even where the cost of the travel and related entertainment is "absorbed" in the trip costs. See Adv. Op. No. 2000-04.

The next question is whether the band director is prohibited from accepting, on behalf of his minor children, the payment of travel expenses from the music boosters. In most situations, the music boosters group is comprised of the parents of the students who perform in the band. Parents whose children perform in the school band are interested in matters pending before the

school district. Adv. Op. No. 2001-04. Based on the specific facts you have presented, the travel and entertainment expenses of the band director are of a substantial nature. Therefore, R.C. 102.03(E) prohibits the band director from accepting, on behalf of his minor children, the payment of trip expenses from the music boosters. Id.

**Providing a Thing of Value to a Public Official—R.C. 102.03(F)**

You should also note R.C. 102.03(F), which provides:

No person shall promise or give to a public official or employee 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 restriction in R.C. 102.03(F) applies to any party who is promising or giving a thing of value to a school district official and employee.

As explained above, a public official's or employee's acceptance of a thing of substantial value, from a party that is interested in matters before, regulated by, or doing or seeking to do business with the public official's or employee's public agency, could be of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to his or her duties. Therefore, R.C. 102.03(F) prohibits any party that is interested in matters before, regulated by, or doing or seeking to do business with a public official's or employee's public agency from providing travel, meals, and lodging, or a gift of substantial value, to a public official or employee of that agency. In the situation you have described, R.C. 102.03(F) prohibits the tour company from providing free travel and entertainment passes for the band director's minor children. R.C. 102.03(F) also prohibits the music boosters from paying the travel and related expenses of the band director's minor children, or from reimbursing the band director for his children's travel and related expenses.

**Conclusion**

As explained above, the Ethics Law and related statutes prohibit the band director from accepting, from the tour company, the music boosters, and any other parties, and prohibit the such parties from providing to the band director, the payment of travel and related expenses on behalf of the band director's minor children regardless of whether the payment is made directly to the band director or "absorbed" through the school district's contract with the tour company. The law does not prohibit the band director from paying the travel and related expenses incurred by his minor children out of his own funds.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on December 14, 2001. The Commission commends you for requesting guidance before the school band director, tour company, and music boosters took any action that is prohibited by the Ethics Law.

David F. Baits, Ph.D.

December 14, 2001

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The opinion 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 contact this Office again.

Very Truly Yours,

A handwritten signature in cursive script, appearing to read "Jennifer A. Hardin".

Jennifer A. Hardin  
Chief Advisory Attorney