

OHIO ETHICS COMMISSION

Merom Brachman
Commission Chair

David E. Freel
Executive Director



8 East Long Street, 10th Floor
Columbus, Ohio 43215
Telephone: (614) 466-7090
Fax: (614) 466-8368
Web site: <http://www.ethics.state.oh.us>

September 13, 2002

Informal Opinion 2002-INF-0913

Gregory T. Hyland, President
Contractor's Division
Greater Cincinnati Electrical Association

Dear Mr. Hyland:

In a letter received by the Ethics Commission, you have asked whether the Ethics Law prohibits electrical safety inspectors (ESI's), who are employees of a private company that enters into contracts with local governments in Hamilton County to provide electrical inspection services, from receiving compensation from the Greater Cincinnati Electrical Association (GCEA), a non-profit trade organization, for teaching continuing education classes to electrical contractors and other parties.

Brief Answer

As explained more fully below, the Ethics Law does not prohibit an ESI from receiving compensation for teaching recertification or continuing education classes that may be attended by electrical contractors within their jurisdiction so long as the following conditions are met: (1) the classes are offered through an independent third party that is not interested in matters before, regulated by, or doing or seeking to do business with, the public entity that the ESI serves; (2) the ESI is not involved in the registration process; (3) the ESI does not solicit persons to enroll in the class; (4) the ESI is paid by the third party rather than the enrollees or attendees; (5) the amount of payment to the ESI is not dependent on the number of enrollees or attendees; (6) The ESI follows the restrictions that apply to private outside employment as discussed in Advisory Opinion No. 96-004; and (7) The ESI is not required to teach these continuing education courses as part of the ESI's public duties.

In the situation you have described, because, as you have stated, GCEA is an association of individual companies involved in the electrical construction industry in the Greater Cincinnati area, GCEA is a party that is regulated by and interested in matters before electrical safety inspectors who perform inspections for governmental entities in Hamilton County. Therefore, electrical safety inspectors who perform inspections for governmental entities in Hamilton County are prohibited from soliciting or accepting from GCEA, and GCEA is prohibited from providing to these electrical safety inspectors, any thing of substantial value, including compensation for teaching courses.

Facts

In your letter to the Ethics Commission, you explain that GCEA would like to hire and compensate local ESI's to teach classes to the members of GCEA's trade organization and interested non-members. You state that participants in the class would pay a fee to GCEA to cover expenses. You also state that there is no direct compensation link between the members of the class and the local ESI.

You state that GCEA is a group of individual companies involved in the electrical construction industry in the Greater Cincinnati area. You further state that GCEA's members are involved in businesses such as electrical supply wholesaling, electrical contracting, manufacturer representatives, and utility companies.

You explain that GCEA offers courses certified for the continuing education requirements of the Ohio Construction Industry Examining Board. You state that a provision of law requires a statewide license for electrical contractors who engage in electrical work on all but one, two, and three family dwellings. You explain that, to maintain a license, the holder must complete thirty hours of continuing education in a three-year period. Of the required thirty hours of continuing education, twenty hours must be in the subject area of the National Electrical Code.

You state that instruction to electrical contractors and electricians on the National Electrical Code has traditionally been done by local ESI's. However, you also state that, because of a recent advisory opinion issued by the Ohio Ethics Commission, ESI's believe that they are not permitted to teach classes attended by people whose work they may be required to inspect.

You explain that, in Hamilton County, the ESI's are employees of a private company that enters into a contract with local governments to provide electrical inspection services. You further explain that this company, Inspection Bureau Inc. (IBI), performs electrical inspection and plan review services only. You state that IBI has never provided training courses for electrical contractors or electricians.

Based on these facts, you ask whether local ESI's are prohibited from receiving compensation from GCEA for providing instruction to electrical contractors and electricians in the training programs offered by GCEA.

Summary—Advisory Opinion No. 98-005

In Advisory Opinion No. 98-005, the Ethics Commission stated that R.C. 102.03(E) prohibits a publicly employed ESI from receiving compensation for teaching a recertification class for electrical contractors who work within the inspector's jurisdiction. An ESI is a "public official or employee" subject to R.C. Section 102.03 regardless of whether the ESI is employed by the political subdivision, or is engaged by an independent contract. Ohio Ethics Commission Advisory Opinion No. 98-005; 1981 Ohio Op. Att'y Gen. No. 81-078. Under the facts addressed

in Advisory Opinion No. 98-005, the ESI's received compensation from the contractor for teaching the recertification class. See Adv. Op. No. 98-005 at p. 8 ("because they are regulated by the ESI within that jurisdiction, receipt of compensation, by an ESI, from these electrical contractors for teaching a recertification class is of such a character as to manifest a substantial and improper influence upon the ESI with respect to his duties" (emphasis added)).

The Ethics Commission has consistently held that the Ohio Ethics Law and related statutes do not prohibit public officials from engaging in private outside employment or the practice of a profession so long as no conflict of interest exists between the public official's private interests and public duties. See Adv. Ops. No. 96-004 and 98-005. A conflict of interest would exist when a public official solicits, accepts, or uses his public position to secure a substantial thing of value of an improper character. See R.C. 102.03(D) and (E); Adv. Ops. No. 88-004, 89-006, and 89-014. In Advisory Opinion No. 98-005, the Ethics Commission stated that the compensation that a public official or employee receives from private outside employment or business activity would be of a substantial nature. See also Adv. Op. No. 96-004.

In addressing the question of whether a thing of value is of an improper character, the Ethics Commission has stated that the relationship between the public official or employee and the source of the thing of value determines whether the thing of value received from that party is improper for purposes of R.C. 102.03(E). Adv. Ops. No. 86-011 and 92-015. As noted above, the Ethics Commission addressed the question of whether R.C. 102.03(E) prohibited ESI's from receiving compensation from contractors for teaching recertification classes in Advisory Opinion Op. No. 98-005.

The question that you have asked is whether the Ethics Law prohibits ESI's from receiving compensation from a third party (GCEA) for teaching continuing education classes to electrical contractors. The same conclusions set forth in Advisory Opinion No. 98-005 apply to the ESI's who would teach continuing education courses under the situation that you have presented. The central question, however, is whether any of these conclusions changes if the source of the payment for teaching the courses is a third party organization that offers the courses.

Receiving Compensation for Teaching Contractor Recertification or Continuing Education Courses Offered Through a Third Party

In order to address your question, it is necessary to examine the source of the ESI's compensation for teaching the classes. In particular, it is necessary to examine whether compensation received from a third party offering a class, rather than the attendees of the class, is of an improper character for purposes of R.C. 102.03(E).

It is important to recognize that the reason for examining the source of the compensation for purposes of R.C. 102.03(E) is to determine whether the compensation would be of an improper character. While it may be argued that the true source of the compensation received by an ESI from the third party is the attendees, there are circumstances under which an ESI's acceptance of compensation from a third party would not be improper for purposes of R.C. 102.03(E).

In a situation where the ESI receives compensation from a third party rather than directly from the contractors, the following factors will establish whether the source of compensation is improper:

- (1) It must be clear that the third-party organization is a party completely independent of the ESI, and the ESI can take no part in the establishment, operation, or ownership of the organization. Further, the third-party organization cannot itself be a prohibited source of compensation. For example, the third-party organization cannot be composed of parties that are regulated by, interested in matters before, or doing or seeking to do business with, the public entity that the ESI serves;
- (2) It must be demonstrated that the ESI is not involved in the registration process;
- (3) The ESI does not solicit persons to enroll in the class;
- (4) The ESI does not receive compensation directly from enrollees;
- (5) The ESI is not compensated based on the number of attendees or enrollees in the class;
- (6) The ESI complies with the outside employment restrictions set forth in Advisory Opinion No. 96-004 (discussed below); and
- (7) The ESI is not required to teach certification classes as a part of his public duties.¹

Where all of these factors can be demonstrated, the acceptance of compensation from an independent third-party organization for teaching recertification and continuing education classes would not manifest a substantial and improper influence upon the ESI. Under these circumstances, R.C. 102.03(E) does not prohibit the ESI from receiving compensation from third

¹ R.C. 2921.43(A)(1) prohibits an ESI from accepting compensation from any party other than his public employer or the public entity he serves, except as provided by law, for the performance of his official duties, for the general performance of the duties of his or her office or employment, or as a supplement to his public compensation. If an ESI is required, as a part of his public duties, to teach continuing education classes for the governmental entity he serves, the ESI would be prohibited from receiving compensation from any other party, including GCEA, to teach the same classes.

parties for teaching continuing education classes, including those attended by contractors within the ESI's jurisdiction.

In the situation you have described, because, as you have stated, GCEA is an association of individual companies involved in the electrical construction industry in the Greater Cincinnati area, GCEA is composed of parties that are regulated by and interested in matters before electrical safety inspectors who perform inspections for governmental entities in Hamilton County. Therefore, electrical safety inspectors who perform inspections for governmental entities in Hamilton County cannot meet the requirements set forth above. The ESI's are prohibited from soliciting or accepting from GCEA, and GCEA is prohibited from providing to these electrical safety inspectors, any thing of substantial value, including compensation for teaching courses. This restriction would also apply to a non-profit or other organization created by GCEA for the purpose of providing training, as the organization would not be independent of GCEA.

On the other hand, in situations where each of the seven factors above can be met, an ESI is not prohibited from receiving compensation from a third party organization for teaching continuing education courses to electrical contractors and others. For example, where the courses are offered and fully administered by an independent entity such as a community college, university, or an organization composed of parties who are not interested in matters before or regulated by the ESI, and where such an independent entity would compensate an ESI a fixed amount for teaching a course, then, provided that the ESI is not required to teach the course as part of his public duties, and further provided that the ESI adheres to the general restrictions on outside employment (discussed below), the ESI would not be prohibited from accepting compensation from the independent entity for teaching the course.

Outside Employment Limitations

In Advisory Opinion No. 96-004, the Ethics Commission identified general restrictions that apply to all public officials and employees who engage in private outside employment. The Commission held in Advisory Opinion No. 96-004 that R.C. 102.03(D) and (E) prohibit a public official or employee who engages in private outside employment or business activity from:

- (1) using public time, facilities, personnel, or resources in conducting a private business or while engaging in private outside employment including conducting demonstrations for clients using public equipment;
- (2) using his official title or identification on private business cards or other written materials or appearing in uniform while soliciting business or conducting demonstrations for clients;
- (3) using his relationship with other public officials and employees to secure a favorable decision or action by the other officials or employees regarding his private interests;

- (4) discussing, deliberating, or voting on any matter involving his private business, including recommending his outside employer's or business's services to his own public agency;
- (5) receiving fees for providing services rendered on projects that he has recommended in his official capacity;
- (6) participating in decisions or recommendations regarding his competitors; and,
- (7) using his public position or authority in any other way to secure a benefit for his outside employer or private business.

The Commission has established these general limitations on the conduct of a public official or employee who wishes to engage in a private business. As long as an ESI adheres to these limitations, and the limitations discussed above, the ESI is not prohibited from receiving compensation from a third party for teaching a continuing education class, even if attendees of the class are contractors within the ESI's jurisdiction.

Conclusion

As explained above, the Ethics Law does not prohibit an ESI from receiving compensation for teaching recertification or continuing education classes that may be attended by electrical contractors within their jurisdiction so long as the following conditions are met: (1) the classes are offered through an independent third party that is not interested in matters before, regulated by, or doing or seeking to do business with, the public entity that the ESI serves; (2) the ESI is not involved in the registration process; (3) the ESI does not solicit persons to enroll in the class; (4) the ESI is paid by the third party rather than the enrollees or attendees; (5) the amount of payment to the ESI is not dependent on the number of enrollees or attendees; (6) The ESI follows the restrictions that apply to private outside employment as discussed in Advisory Opinion No. 96-004; and (7) The ESI is not required to teach these continuing education courses as part of the ESI's public duties.

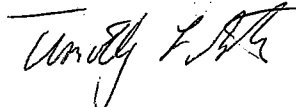
In the situation you have described, because, as you have stated, GCEA is an association of individual companies involved in the electrical construction industry in the Greater Cincinnati area, GCEA is a party that is regulated by and interested in matters before electrical safety inspectors who perform inspections for governmental entities in Hamilton County. Therefore, electrical safety inspectors who perform inspections for governmental entities in Hamilton County are prohibited from soliciting or accepting from GCEA, and GCEA is prohibited from providing to these electrical safety inspectors, any thing of substantial value, including compensation for teaching courses.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on September 13, 2002. The Commission commends you for requesting guidance before any actions that could be prohibited by law are taken.

Gregory T. Hyland
September 13, 2002
Page 7

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.

Sincerely,



Timothy L. Gates
Staff Attorney