

OHIO ETHICS COMMISSION

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David E. Freel, *Executive Director*

May 27, 2003

Informal Opinion 2003-INF-0527

G. Frederick Compton, Jr.
Whalen & Compton

Dear Mr. Compton:

You have asked whether the Ethics Law prohibits a school district official or employee from accepting a gift, or payment for a meal or other entertainment expenses, from an individual who has, will, or does provide professional services to the district if the purpose of the meal or entertainment is purely social. You have explained that, in some cases, a person who is an owner, officer, employee, or board member of an entity that is doing or seeking to do business with, regulated by, or interested in matters before a school district may offer a meal or entertainment to an official or employee of the district with whom the person has developed a personal friendship. You have not given specific examples of the cost of the meals or entertainment.

Brief Answer

As explained more fully below, R.C. 102.03(D) and (E) prohibit a school district official or employee from soliciting or accepting a gift, meal, or entertainment expenses of substantial value from a person who is representative of an entity that is doing or seeking to do business with, regulated by, or interested in matters before the district, regardless of whether the purpose of the gift, meal, or entertainment is purely social and whether the district official or employee has a friendship with the person. R.C. 2921.43(A)(1) prohibits the acceptance of any remuneration given in return for the specific performance of a duty directly related to the person providing the remuneration. However, the law does not prohibit a school district official or employee from otherwise accepting a meal of a routine character, or one ticket to an event, or another item having de minimis value, from a friend who is also a representative of an entity that is doing or seeking to do business with, regulated by, or interested in matters before the district.

Soliciting or Accepting Anything of Value— R.C. 102.03(D) and (E)

R.C. 102.03(D) and (E) apply to situations involving a school district official's or employee's acceptance of gifts. These provisions of the Ethics Law read as follows:

- (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 department, division, institution, board, commission, authority, bureau, or other instrumentality of the state, a county, city, village, township, or any other governmental entity. See R.C. 102.01(B) and (C). The definition of "public official or employee" excludes any person who is a teacher or other kind of instructor, and does not have the authority to perform supervisory or administrative functions. R.C. 102.01(B). Therefore, any official or employee of a school district, excluding a teacher or other educator whose position does not perform supervisory or administrative functions, is a "public official or employee" for purposes of R.C. 102.03. Ohio Ethics Commission Advisory Opinion No. 93-017 (teachers and other educators are not subject to R.C. 102.03, but are subject to R.C. 2921.42 and 2921.43).

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). Gifts and gratuities constitute things of value for purposes of R.C. 102.03. Adv. Ops. No. 82-005 and 86-003.

The Commission has consistently stated that in order to determine whether a thing of value would manifest a substantial and improper influence upon a public official or employee with respect to his duties, it is necessary to examine both the source and the nature of the thing of value. Adv. Ops. No. 86-011, 2001-03, and 2001-04. Generally, R.C. 102.03(D) and (E) prohibit a public official or employee from soliciting, accepting, or using his position to secure anything of a substantial nature from a party that is doing or seeking to do business with, interested in matters before, or regulated by the public agency he serves. Id.

The word "substantial," as used in R.C. 102.03, has been defined by the Commission as "of or having substance, real, actual, true; not imaginary; of considerable worth or value; important." Adv. Op. No. 76-005. The Commission has identified some items that are clearly of a "substantial" nature. Items that the Commission has determined are substantial things of value

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include travel, meals, and lodging, a season's worth of tickets to the games of a professional sports team, jewelry, golf outings at exclusive courses, and discounts on furniture and major appliances. See Adv. Ops. No. 89-014 (travel, meals, and lodging), 92-015 (discounts), 2001-03 (golf outings), and 2001-04 (jewelry).

The Commission has also found that the Ethics Law does not prohibit a public official or employee from accepting a thing of nominal or de minimis value even if it is provided by a vendor or regulated or interested party. For example, the Commission has stated that a public official or employee is not prohibited from soliciting or accepting a meal of a routine character, or a tee-shirt or other kind of nominal promotional item, provided by a vendor or potential vendor. Adv. Op. No. 2001-03 and 2001-04. However, the Commission has cautioned that de minimis or nominal items or expenses could have a substantial cumulative value if provided repetitively. Adv. Op. No. 86-003.

The question then becomes whether R.C. 102.03(D) and (E) prohibit a public official or employee from soliciting or accepting a gift, meal, or entertainment expenses of substantial value from a person who is a representative of a vendor, or regulated or interested party, if the meal or entertainment is purely social or the official or employee has a friendship with the person. For purposes of applying R.C. 102.03(D) and (E) to a particular situation, it is necessary to determine whether the acceptance or solicitation of the thing of value could manifest a substantial and improper influence upon the public official or employee with respect to his duties. As always, the application of R.C. 102.03(D) and (E) is dependent on the facts of each individual situation.

Even where the purpose of the gift, meal, or entertainment may be purely social, or a personal friendship develops between the school district official and a person who is affiliated with a vendor, or regulated or interested party, as a result of official interaction, the acceptance of the meal or entertainment is subject to conflict of interest protections to the public. The school district official or employee performs official duties related to the vendor, or regulated or interested party, regardless of the personal friendship between them. In fact, in your letter, you have stated that, even if the purpose of an entertainment event is social, it is unrealistic to think that there will never be any discussion of school district business at the event. The acceptance of the gift, meal, or entertainment of a substantial value in such an instance could manifest a substantial and improper influence upon the official or employee with respect to his or her duties as they affect the source.

Therefore, based on the application of R.C. 102.03(D) and (E) to the acceptance of gifts, a school district official or employee is prohibited from soliciting or accepting a gift, meal, or entertainment of substantial value from a person who is a representative of a company that is doing or seeking to do business with, regulated by, or interested in matters before the district, regardless of the purpose of the meal or entertainment and regardless of whether the school district official or employee has a personal friendship with that person.

Other Considerations

You should also be aware of R.C. 102.03(F), which prohibits any "person" from promising or giving 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. With respect to your question, R.C. 102.03(F) applies to the person who is a company owner, officer, employee, or board member. R.C. 102.03(F) would prohibit a person who is a representative of a company that is doing or seeking to do business with, regulated by, or interested in matters before a school district, from giving anything of substantial value, including a gift, meal, or entertainment, to a district official or employee, regardless of the purpose of the gift, meal, or entertainment and regardless of whether the person has developed a personal friendship with the official or employee as a result of interactions between the parties.

Further, R.C. 2921.43(A) prohibits public servants, except in narrow situations permitted by law, from accepting a gift from any source, and a person is prohibited from providing a gift to a public servant, regardless of the value of the gift, if the gift is provided to the public servant as payment for performance of public duties.

Finally, a financial disclosure filer who receives a gift is required to disclose the source of the gift on his financial disclosure statement if the value of the gift is over the threshold amount for disclosure.¹ Therefore, if a public official or employee who is required to file a financial disclosure statement does decide to accept a gift valued at over the threshold amount from any person, including a friend, the official or employee is required to disclose the source of the gift on his financial disclosure statement.

Conclusion

As explained above, R.C. 102.03(D) and (E) prohibit a school district official or employee from soliciting or accepting a gift, meal, or entertainment expenses of substantial value from a person who is representative of an entity that is doing or seeking to do business with, regulated by, or interested in matters before the district, regardless of whether the purpose of the gift, meal, or entertainment is purely social and whether the district official or employee has a friendship with the person. R.C. 2921.43(A)(1) prohibits the acceptance of any remuneration given in return for the specific performance of a duty directly related to the person providing the remuneration. However, the law does not prohibit a school district official or employee from otherwise accepting a meal of a routine character, or one ticket to an event, or another item having de minimis value, from a friend who is also a representative of an entity that is doing or seeking to do business with, regulated by, or interested in matters before the district.

¹ R.C. 102.022(B) requires disclosure of the source of any gift valued at over \$500.00, and applies to state college and university trustees and to local officials who receive less than \$16,000 per year for their public service. R.C. 102.02(A)(7) applies to all other disclosure filers, and requires disclosure of the source of any gift valued at over \$75.00. The source of gifts must be disclosed if the total value of the gifts exceeds the threshold amount.

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The Ohio Ethics Commission approved this informal advisory opinion at its meeting on May 8, 2003. The Commission commends you for seeking advisory guidance.

This opinion is based on the facts presented. It 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. I apologize for the delay in responding to your question. If you have any questions about the opinion or desire additional information, please contact this office again.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer A. Hardin". The signature is fluid and cursive, with the first name being the most prominent.

Jennifer A. Hardin
Chief Advisory Attorney