

# OHIO ETHICS COMMISSION

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David E. Freel, *Executive Director*

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August 5, 2003

Informal Opinion 2003-INF-0805

Alan I. Shorr, Managing Partner  
Christley, Herington & Pierce

[REDACTED]

Dear Mr. Shorr:

The Ethics Commission received your letter on February 14, 2003. In your letter, you ask whether the Ohio Ethics Law and related statutes prohibit your law firm, Christley, Herington & Pierce, from spending an average of \$35.00 per person, for 100 to 130 members of school boards that are, or may become, clients of your law firm, to pay for a social dinner at a restaurant that is located off the site of the annual Ohio School Boards Association (OSBA) convention that the board members are attending.

## **Brief Answer**

As explained below, under the specific facts you have identified, R.C. 102.03(F) prohibits your law firm from spending \$3,500 and \$4,550, an average of \$35 per person, for 100 to 130 members of school boards that are, or may become, clients of your law firm, to pay for a social dinner at a restaurant that is located off the site of the annual Ohio School Boards Association (OSBA) convention that the board members are attending.

## **Facts**

You state that your law firm has traditionally hosted a dinner at a German Village restaurant during the annual OSBA convention. The firm has historically provided written invitations to board members of school districts that your firm represents, and some board members of districts that your firm does not represent. Your request for an advisory opinion includes as a sample invitation, which describes a "German Village Dinner" with a half-hour of cocktails, a dinner of traditional German food, and entertainment provided by a German band.

You state that between 100 and 130 school board members have attended these annual dinners and the average cost to your law firm has been approximately \$35.00 per person. You also state that in the year 2002, your firm posted an "open invitation" to the dinner at the hotels that housed OSBA convention delegates. You further state that school board members of one district responded to the "open invitation," contacted your firm, and attended the dinner.

### **Advisory Role of the Ethics Commission**

Before proceeding further, it must be noted that you have requested the Ethics Commission to address an activity that your law firm has continued for sixteen years. The Commission generally issues advisory opinions in response to questions or issues that are either hypothetical or prospective. Ohio Ethics Commission Advisory Opinion No. 75-037. The Commission has explained that the rendering of advisory opinions is not a fact-finding process and that it cannot in rendering an advisory opinion determine whether any person has violated the Ethics Law and related statutes. *Id.* Rather, the Commission, in an advisory opinion, explains the prohibitions imposed by the Ethics Law and related statutes and establishes the standards and criteria that persons who interact with public officials or employees must observe to avoid violating the Ethics Law and related statutes in a given set of circumstances. Adv. Ops. No. 90-013 and 92-015.

The Ethics Commission has, however, issued advisory opinions in limited instances where a customary and widespread practice has existed for many years. In those situations, public officials and employees, and those who interact with them, have engaged in a practice without the benefit of an advisory opinion by the Ethics Commission regarding conduct that a public official or employee must observe to avoid violating the Ethics Law and related statutes. *See, e.g.,* Adv. Ops. No. 90-001 and 2001-03.

Your question was prompted by Advisory Opinions No. 2001-03 and 2002-02, which address entertainment and meals provided to public officials and employees. Because you have, in good faith, asked for an advisory opinion about the firm's future activities, the Ethics Commission will provide you with advice with regard to future dinners, without considering the past dinners you describe.

### **Conflict of Interest Provision—R.C. 102.03 (F)**

Your attention is directed to R.C. 102.03 (F), which reads:

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 term "person" is defined, for purposes of R.C. 102.03 (F), to include any individual, corporation, partnership, association, or other similar entity. R.C. 1.59. In the instant situation, your law firm is "person" and is subject to the prohibition imposed by R.C. 102.03(F). A "public official or employee," as that term is used in R.C. 102.03 (F), includes any person who is elected to a school district board of education. R.C. 102.01(B) and (C); Adv. Op. No. 2001-04.

The term "anything of value" is defined for purposes of R.C. 102.03 in R.C. 1.03 to include money and every other thing of value. R.C. 1.03, 102.01(G). The Ethics Commission has explained that meals, gifts, gratuities, honoraria, and payments for attendance at events that require a fee for admission (such as athletic events and golf outings), constitute things of value for purposes of R.C. 102.03. Adv. Ops. No. 79-006, 92-015 and 2001-03. In the instant situation, payment of the cost of a dinner with cocktails and entertainment is a thing of value for purposes of R.C. 102.03(F).

### **Source of a Thing of Value**

Division (F) of Section 102.03 of the Revised Code was enacted as part of Am. Sub. H.B. 300, 116th Gen. A. (1986) (eff. September 17, 1986). Prior to enactment of Am. Sub. H.B. 300, Division (D) of Section 102.03 prohibited a public official or employee from using the authority or influence of his office to secure anything of value for himself that would not ordinarily accrue to him in the performance of his duties if the thing of value was of such a character as to manifest a substantial and improper influence upon him with respect to his duties. The Ethics Commission determined that this earlier version of R.C. 102.03(D) prohibited a public official or employee from using his public position to solicit or receive consulting fees, honoraria, conference registration fees, travel, meal, and lodging expenses, or other similar payments or reimbursement from a party that was interested in matters before, regulated by, or doing or seeking to do business with the governmental entity with which the public official or employee served. Adv. Ops. No. 79-002, 80-004 and 84-009.

In discussing the prohibition imposed by R.C. 102.03(D), the Ethics Commission stated:

[T]he 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 duties, because it could impair his independence of judgement in the performance of his official duties and affect subsequent decisions in matters involving the donor of the thing of value.

Adv. Op. No. 84-010. See also Adv. Op. No. 86-011.

Applying the precedent established under R.C. 102.03(D), the Ethics Commission stated that a thing of value is considered to be of an improper character for purposes of R.C. 102.03(F) where the person that is the source of the thing of value is interested in matters before, regulated by, or doing or seeking to do business with the public agency with which the official or employee to whom he is providing the thing serves. Adv. Ops. No. 89-006, 90-009, and 95-001. The Commission stated that a public official's or employee's acceptance of a thing of value from an interested, regulated, or vendor party could manifest an improper influence upon that official's or employee's objectivity with respect to his public duties. Id.

In the instant situation, the school districts that your firm represents “are doing business with” your law firm. It is also apparent that your firm may be seeking to do business with other school districts whose board members attend the conference and respond to your invitation. Therefore, your law firm is a prohibited source of things of value for these school board members.

### **Nature of a Thing of Value**

The Ethics Commission has explained that both the nature and the source of the thing of value will determine whether R.C. 102.03(F) prohibits a person from promising or giving the thing to a public official or employee. The Commission has stated that a thing of value is of such a character as to manifest a substantial influence if the thing is of a substantial nature or value. Adv. Ops. No. 90-001, 92-014, and 92-015. See also Adv. Ops. No. 75-014 and 76-005 (the word “substantial” means “of or having substance, real, actual, true, not imaginary; of considerable worth or value; important.”) By contrast, the Commission has held that promotional items of nominal value are generally not considered to be “substantial” for purposes of R.C. 102.03(F). See, e.g., Adv. Op. No. 92-014 and 2001-04.

As set forth above, between 100 and 130 school board members have usually attended these annual dinner events and the average cost to your law firm has been approximately \$35.00 per person. In Advisory Opinion No. 92-015, the Ethics Commission explained that the aggregate value of the items that a person provides to public officials or employees may be considered for purposes of Division (F) if a person promises or gives a quantity of things of value to a group of public officials or employees either at once or over a period of time. In Advisory Opinion No. 2001-03, the Commission stated that R.C. 102.03(F) prohibits a party that is interested in matters before, regulated by, or doing or seeking to do business with public agencies from sponsoring a golf outing for a large number of public officials or employees if the combined nature of the outing is substantial for the sponsor.

In the instant situation, a substantial cumulative value exists. The aggregate value of the dinner you describe, based on the cost of the dinner and the numbers of school board members attending, falls between \$3,500 and \$4,550, which is substantial rather than nominal or de minimis in nature. Because of the substantial cumulative value of the dinner, R.C. 102.03(F) prohibits your law firm from paying an average of \$35.00 per person for a dinner for 100 to 130 school board members who represent school districts that are, or may become, clients of your law firm.

### **Conference Meal, Reception, or Open House Exception—Advisory Opinion No. 2002-02**

In Advisory Opinion No. 2002-02, the Ethics Commission addressed a limited exception to R.C. 102.03(F) when a person is providing a meal, reception, or open house at an educational conference attended by public officials and employees. The Commission explained that the meal, reception, or open house is a thing of value that would have a substantial and improper influence upon the public officials and employees who attend the event unless the meal, reception, or open house is of an ordinary, routine character, and is provided to all officials and

employees at the conference regardless of whether the public agencies they serve have a business, regulatory, or other relationship with the sponsor.

In Advisory Opinion No. 2002-02, the Ethics Commission considered meals and other events that are offered as a part of an educational conference, and at which all attendees at the conference can reasonably be accommodated. In Advisory Opinion No. 2002-02, the Commission specifically distinguished events of the kind you describe:

The question before the Commission in this opinion does not address the potential application of R.C. 102.03(F) or 2921.43(A) to a person who wishes to pay the total cost of a meal or entertainment for a specific and select group of public officials who are simultaneously considering or currently doing business with the person or involved in a regulative matter involving the person.

Based on the specific facts you have presented, the dinner you described is not a part of the conference. The dinner will be incidental to the conference, and will be held away from the conference site. Until last year, the law firm invited school districts that are clients of the firm, and a few districts that are not clients. It appears, from your description of the dinner, that the law firm intends to thank and network with its current and prospective clients in a purely social setting.

You have stated that, last year, your law firm posted a notice to invite all conference attendees. It is unlikely that your law firm either expected or desired that all of the conference participants would attend the dinner. Further, you will directly pay the costs of the social event at issue for those individuals who attend and for those who will decide whether to continue or begin engaging the services of your firm. By contrast, in the situation described in Advisory Opinion No. 2002-02, the benefit is provided in conjunction with an educational and informational program, at the conference, and is paid primarily to the organizer of the conference. Advisory Opinion No. 2002-02 does not apply to the situation you have described, even if the law firm posts an open invitation at the conference.

#### **School District Officials or Employees Attending the Social Dinner**

You have also asked whether the Ohio Ethics Law prohibits school district officials or employees from attending the dinner you have described. Because R.C. 102.03(F) prohibits your law firm from promising or giving the dinner you have described, it is unnecessary for the Commission to address your second question.

#### **Conclusion**

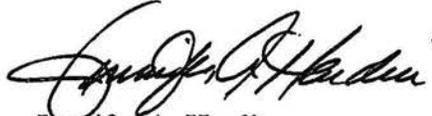
As explained above, under the specific facts you have identified, R.C. 102.03(F) prohibits your law firm from spending \$3,500 and \$4,550, an average of \$35 per person, for 100 to 130 members of school boards that are, or may become, clients of your law firm, to pay for a social dinner at a restaurant that is located off the site of the annual Ohio School Boards Association (OSBA) convention that the board members are attending.

Alan I. Shorr  
August 5, 2003  
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The Commission approved this opinion at its meeting on June 13, 2003. The Commission commends you for seeking an advisory opinion in response to this question.

The 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. If you have any questions or desire additional information, please feel free to contact this Office again.

Sincerely,



Jennifer A. Hardin  
Chief Advisory Attorney