

OHIO ETHICS COMMISSION

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September 23, 2003 Informal Opinion 2003-INF-0923-1

George W. Davis
Member, Tribute to Richard D. Watkins Committee

Dear Mr. Davis:

On July 2, 2003, the Ohio Ethics Commission received your letter requesting an advisory opinion. In your letter, you ask whether the Ohio Ethics Law and related statutes will prohibit the Tribute to Richard D. Watkins Committee (Committee) from raising money to provide the retiring Mayor of the City of Canton (City) with a gift. You also ask whether money collected by the Committee can be given directly to the Mayor or if any extra funds can be donated to the Mayor's favorite charity in his name.

Brief Answer

As explained more fully below, the Committee is not prohibited from using the funds it raises to provide a substantial gift to the Mayor, and the Mayor is not prohibited from accepting such a gift, if:

- All contributions to the Committee are voluntary;
- The Committee ensures that no party interested in matters before, regulated by, or doing or seeking to do business with the City is solicited by or gives funds to the Committee, or solicits any funds on behalf of the Committee; and
- No city officials or employees solicit funds for the Committee.

As is also described in detail in this opinion, if the Mayor receives a gift valued at over seventy-five dollars, he is required to disclose, on his financial disclosure statement for 2003, the following parties, where appropriate, as the sources of the gift:

- The Committee; and
- Any person or entity that contributed more than seventy-five dollars toward the gift.

The Mayor is not required to disclose, as the source of a gift, any person who contributed seventy-five dollars or less in total to the Committee.

Facts

You state that the Mayor of the City of Canton, Richard D. Watkins, is retiring at the end of this year after serving 12 years as mayor. You also state that a group of friends and associates has formed the Committee to plan a dinner party to be held in the Mayor's honor. You state that an estimated 500 guests from the City of Canton and across the state will attend the dinner party. You state that it is expected that the Mayor will receive many tributes and written accolades at the party.

In addition, you state that the Committee desires to provide the Mayor with a gift that "would be valued at more than \$75." In a telephone conversation with Ethics Commission staff, you disclosed that the proposed gift could be worth several thousand dollars. You have explained that the Committee would like to raise funds to provide the gift to the Mayor, and that the source of some contributions may be individuals and businesses within the City of Canton that are subject to local regulations. Finally, you have stated that, while the Mayor knows that a dinner is being planned in his honor, he is unaware that the Committee is considering providing him with a gift. As I noted in a telephone conversation, the Commission has asked that the Committee inform the Mayor that it intends to provide him with a gift.

Soliciting, Accepting, and Using Position to Secure a Gift—R.C. 102.03(D), (E), and (F)

Your attention is directed to R.C. 102.03(D), (E), and (F), 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.
- (F) 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.

Nothing in the process that you have proposed suggests that the Mayor is improperly authorizing or using his official authority or influence to secure funds for the Committee to pay for the tribute and gift, such that the restriction in R.C. 102.03(D) is implicated. Although the Committee should inform the Mayor that it intends to provide him with a substantial gift, the Committee must also ensure that the Mayor is not placed in such a position.

A "public official or employee" is defined for purposes of R.C. 102.03(E) and (F) to include any person who is elected or appointed to an office of a City. R.C. 102.01(B) and (C). Adv. Op. No. 91-008. Therefore, the prohibition imposed by R.C. 102.03(E) applies to the Mayor. The term "person" is defined to include any individual, corporation, partnership, or other similar entity. R.C. 1.59. Therefore, the prohibition imposed by R.C. 102.03(F) applies to the Committee and to the individuals and organizations that would be the source of the funds solicited by the Committee.

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 held that money, gifts, and gratuities constitute things of value for purposes of R.C. 102.03. Adv. Ops. No. 86-003, 91-010, and 92-015. In the instant situation, the gift, and the funds that the Committee would collect to pay for it, are things of value for purposes of R.C. 102.03(E) and (F).

Source and Nature of a Thing of Value—R.C. 102.03(E) and (F)

The Ethics Commission has explained that a thing of value must be both from an improper source and of a substantial nature to be prohibited by R.C. 102.03(E) and (F). Adv. Ops. No. 90-001 and 92-015. In discussing the source of a thing of value, the Commission has stated that anything of value provided to a public official or employee from a party that is interested in matters before, regulated by, or doing or seeking to do business with the agency he serves will be of such a character as to manifest an improper influence on the official or employee. Adv. Ops. No. 84-010 and 86-011.

The Ethics Commission has explained that anything of value that is of a substantial nature will be of such a character as to manifest a substantial influence on the official or employee. 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.") Anything of value of that is of a nominal nature is generally not considered to be "substantial" for purposes of R.C. 102.03(E). See, e.g., Adv. Op. No. 2001-04.

Committee Soliciting Funds for a Substantial Gift—R.C. 102.03(F)

As set forth above, you state that the Committee desires to solicit and accept contributions in order to provide the retiring Mayor with a gift of substantial value.

At the outset, it must be clear that the persons who contribute to the gift do so willingly, without any use of authority by the Mayor or his office, or any of his subordinates on his behalf, to solicit contributions. Any person who is approached to contribute to the gift must be advised that there is no obligation and that the person is free to decline without suffering any consequence. See Adv. Op. No. 2002-01. R.C. 102.03(E) prohibits any City official or employee from soliciting funds, for the Committee, that will be used for a gift for the Mayor.

The Committee itself is not interested in matters before, regulated by, or doing or seeking to do business with the City. However, the Committee would be consolidating and redistributing funds that it has solicited and accepted. If the Committee solicits or accepts funds from businesses or individuals that are interested in matters before, regulated by, or doing or seeking to do business with the City, then the Committee would be circumventing R.C. 102.03(E) and (F) by indirectly giving to the Mayor things of value that he could not accept directly. City of Parma Heights v. Schroeder, 26 Ohio Op. 2d 119 (C.P. Cuyahoga County 1963) (a public official cannot do indirectly what he cannot lawfully do directly). Even though the Mayor will be retiring from his position at the end of the year, he will still be the elected head of the executive branch of the City during the time the funds are being solicited and at the time the gift will be provided to him.

Therefore, R.C. 102.03(F) prohibits any business or individual that is interested in matters before, regulated by, or doing or seeking to do business with the City from contributing funds to the Committee for the purpose of providing the Mayor with a gift. This would include owners, officers, and principals of companies that are interested in matters before, regulated by, or doing or seeking to do business with the City. It would also include any employee or other person connected with such companies, if that person were directly involved in matters between the company and the City.

R.C. 102.03(F) also prohibits any person who is interested in matters before, regulated by, or doing or seeking to do business with the City of Canton from soliciting other people to make contributions to the fund. For example, if a member of the Committee owns a company that is a vendor of the City, that Committee member is prohibited from making contributions to the Committee. The Committee member is also prohibited from soliciting contributions to the Committee from any person, including individuals who are subordinate to the Committee member.

R.C. 102.03(F) would not prohibit the Committee from soliciting or accepting contributions from parties who are not interested in matters before, regulated by, or doing or seeking to do business with the City, or from using contributions collected from unrelated parties to provide the Mayor with a gift.

Mayor Accepting a Substantial Gift—R.C. 102.03(E)

R.C. 102.03(E) would also prohibit the Mayor from accepting a gift purchased with contributions made by these related parties, even if he did not solicit the gift or contributions. In order to protect against any real or perceived conflict of interest, the Committee must be extremely diligent to ensure that no party that is interested in matters before, regulated by, or doing or seeking to do business with the City is solicited or provides funds to the Committee for the purpose of providing the Mayor with a gift. R.C. 102.03(E) would not prohibit the Mayor

from accepting a gift that is purchased for him by the Committee using contributions made by parties that do not have these kinds of relationships with the City.

Gift of Money

You also ask whether the money collected by the Committee can be given directly to the Mayor or if any extra funds can be donated to the Mayor's favorite charity in his name.

As stated above, R.C. 102.03(E) and (F) prohibits a public official from accepting a thing of value that is both from an improper source and of a substantial nature. As long as no party that is interested in matters before, regulated by, or doing or seeking to do business with the City of Canton is solicited or gives funds, the Committee is not prohibited from providing anything of value, regardless of its form, to the Mayor as a gift.¹ However, given that the purpose of the party is to honor the Mayor for his service to the community, and the Committee's desire not to embroil him in an ethics controversy, the Committee should consider that a substantial cash gift to the Mayor could have an improper appearance to the public and tarnish an otherwise well-intentioned event.

Disclosure of Gifts—R.C. 102.02(A)(7)

The Mayor is also subject to the financial disclosure requirements set forth in R.C. 102.02(A). R.C. 102.02(A) requires the Mayor to file a financial disclosure statement in 2004 reflecting financial information for 2003, including the source of gifts he received during the year.

R.C. 102.02(A)(7) requires that the Mayor disclose the source of each gift of over seventy-five dollars received by the person in the person's own name or by any other person for the person's use or benefit. The Mayor is not required to disclose the amount or nature of a gift, although providing that information may, at times, clarify the disclosure.

In this situation, the Mayor will be required to disclose any contributor to the Committee who provided a contribution in excess of seventy-five dollars toward the gift, because the contribution was received by the Committee for the Mayor's benefit. The Mayor will also be required to disclose the Committee as the source of a gift because the total value of the gift provided to the Mayor by the Committee will be over seventy-five dollars. Adv. Op. No. 2002-01. The Mayor is not, however, required to disclose individual contributors, who contribute seventy-five dollars or less to the Committee as sources of the gift.

¹ The supplemental compensation law, R.C. 2921.43(A), would prohibit the Committee from providing the Mayor with money, a gift, or any other thing of value if it were provided to him in return for: (1) performing a duty, act, or service required in his official capacity as a public servant; (2) the general performance of his public duties; or (3) as a supplement to his public compensation. If the Committee intends to provide the money or gift to the Mayor as compensation, please contact this office for further guidance.

Conclusion

As explained more fully above, the Committee is not prohibited from using the funds it raises to provide a substantial gift to the Mayor, and the Mayor is not prohibited from accepting such a gift, if:

- All contributions to the Committee are voluntary;
- The Committee ensures that no party interested in matters before, regulated by, or doing or seeking to do business with the City is solicited by or gives funds to the Committee, or solicits any funds on behalf of the Committee; and
- No city officials or employees solicit funds for the Committee.

As is also described in detail in this opinion, if the Mayor receives a gift valued at over seventy-five dollars, he is required to disclose, on his financial disclosure statement for 2003, the following parties, where appropriate, as the sources of the gift:

- The Committee; and
- Any person or entity that contributed more than seventy-five dollars toward the gift.

The Mayor is not required to disclose, as the source of a gift, any person who contributed seventy-five dollars or less in total to the Committee.

Finally, the conclusions of this opinion apply only if the funds are used for the purpose you have described in your request. The use of funds for any other purpose, including payments to the Mayor that are provided as compensation for his service as Mayor, may raise additional issues under the Ohio Ethics Law and related statutes. This opinion does not provide any immunity for the use of funds in any way other than the one you have set forth.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on September 10, 2003. The Commission commends you for requesting guidance before taking any actions that could be prohibited by the Ethics Law.

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 contact this Office again.

Sincerely,



Jennifer A. Hardin
Chief Advisory Attorney