

OHIO ETHICS COMMISSION

Merom Brachman, *Chair*
Sarah M. Brown, *Vice Chair*



8 East Long Street, 10th Floor
Columbus, Ohio 43215
Telephone: (614) 466-7090
Fax: (614) 466-8368
Web site: www.ethics.ohio.gov

David E. Freel, *Executive Director*

June 8, 2005

Informal Opinion 2005-INF-0608

Glenn Egelman, MD, FACP

[REDACTED]

Dear Dr. Egelman:

In a letter received by the Ohio Ethics Commission on March 16, 2005, you asked if the Ethics Law and related statutes prohibit you, as the Director of Student Health Service at Bowling Green State University (BGSU), from working as a consultant for Highland Campus Health Group (HCHG), a private vendor that has contracted with BGSU to assist Student Health Service. You also asked if the law prohibits you, and other Student Health Service professional staff, from accepting travel, meals, lodging, and other expenses from HCHG to attend medical conferences and meetings.

On March 2, 2005, the Commission received a companion advisory opinion request from Andrew Menter, the President and Chief Executive Officer of HCHG. This opinion will address the questions raised in Mr. Menter's request, and will use additional facts about the proposed relationship provided by Mr. Menter.

Brief Answer

As explained below, R.C. 102.03(D) and (E) prohibit you, as the Director of Student Health Service at BGSU, from soliciting, accepting, or using your position to secure anything of value, including compensation for consultative services and expenses associated with attending meetings or funding for medical conferences, from any person doing or seeking to do business with the university, including HCHG. R.C. 102.03(D) and (E) also prohibit any other official or employee of BGSU from accepting expenses for attending meeting or funding for medical conferences from any person doing or seeking to do business with BGSU, including HCHG. Furthermore, HCHG is bound by the associated provision set forth in R.C. 102.03(F), which prohibits any person from promising or giving a public official or employee things of value.

Facts

In your letter to the Ethics Commission, you explained that you are the Director of BGSU Student Health Service. You explained that in 2004, BGSU entered into a five-year contract with HCHG, a private vendor retained to assist Student Health Service with its transition to billing students' private health insurance for primary care visits to the Student Health Center. You noted that your past and present experience with student health centers could benefit other universities and asked if the law prohibits you from serving as a consultant for HCHG.

In Mr. Menter's letter to the Commission, he explained that you were not a signatory to the contract between BGSU and HCHG. Mr. Menter more fully describes the services HCHG anticipates you would provide as a consultant. Mr. Menter explains that other health center directors who are contemplating partnerships may desire feedback about BGSU's experiences with HCHG. HCHG also anticipates sponsoring sessions at nationwide conferences, at which you would either present a case study of third party billing at BGSU or host roundtable discussions with your peers.

Conflict of Interest Prohibitions—R.C. 102.03(D) and (E)

R.C. 102.03(D) and (E) provide:

- (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.

An employee of a state university is a "public official or employee," as that term is defined in R.C. 102.01(B) and (C), and is subject to the prohibitions of R.C. 102.03(D) and (E). Ohio Ethics Commission Advisory Opinion No. 2003-03 and R.C. Chapter 3341.¹ Therefore, as the Director of Student Health Service, you are subject to R.C. 102.03(D) and (E).

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); Adv. Ops. No. 82-002 and 89-003. Compensation received by a public official or employee from private employment or business activity is a "thing of value" for purposes of R.C. 102.03(D) and (E). Additionally, expenses associated with conferences and meetings, such as travel, meals, and lodging expenses, are substantial things of value. See Adv. Ops. No. 2003-03 and 89-014.

¹ Some university employees whose duties are limited to teaching are excluded from the definition of "public official or employee." R.C. 102.01(B)

General Restrictions on Outside Employment or Business Activity

The Ethics Law does not prohibit a public official or employee from engaging in private employment or business activity provided that there is neither a conflict of interest between his public duties and private financial interests nor a misuse of the authority or influence of his public office or employment. Adv. Op. No. 96-004. Whenever private employment or business activity is not prohibited, the Ethics Law imposes general restrictions on all public officials and employees who engage in private employment or business activity. These restrictions are described in Ohio Ethics Commission Advisory Opinion No. 96-004, which is attached to this advisory opinion.

Prohibitions Imposed By R.C. 102.03(D)

R.C. 102.03(D) prohibits a public official or employee from using the authority or influence of his position to secure anything of value for the official, family members, business associates, or others where there is a conflict of interest. Adv. Ops. No. 79-002, 80-004, and 89-006. The application of the prohibition is dependent upon the facts and circumstances of each situation. Adv. Op. No. 87-008.

The Ethics Commission has determined that, under certain circumstances, the public interest could be adversely affected when a public official or employee receives compensation from private employment or business activity as a result of his use of, or failure to exercise, his official authority, or if the receipt of compensation could impair the performance of his public duties. Adv. Op. No. 96-004. Therefore R.C. 102.03(D) prohibits a public official or employee who is engaged in private employment or business from:

- (a) using public time, facilities, personnel, or resources in conducting his private employment or business, including using public equipment to conduct demonstrations for clients;
- (b) using his official title or identification on private business cards or other written materials;
- (c) 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;
- (d) discussing, deliberating, or voting on any matter involving his private interest;
- (e) receiving compensation for providing services rendered on projects that he has recommended in his official capacity;
- (f) participating in decisions or recommendations regarding his competitors;
and
- (g) using his public position or authority in any other way to secure a benefit for his outside employer or private business.

Prohibitions Imposed By R.C. 102.03(E)

R.C. 102.03(E) prohibits a public official or employee from soliciting or accepting anything of value that would have an improper influence upon him with respect to his duties. Unlike R.C. 102.03(D), which prohibits a public official or employee from using the authority or influence of his office to secure a thing of value, R.C. 102.03(E) prohibits a public official or employee from merely soliciting or accepting an improper thing of value even if he does not use his official authority or influence to secure it. Adv. Op. No. 90-004.

R.C. 102.03(E) prohibits a public official or employee from engaging in private employment or business activity with a party that is interested in matters before, regulated by, or doing or seeking to do business with his own public agency. If a public official or employee operates a private business, then he is prohibited from accepting, soliciting, or using his authority or influence to secure fees or other payments from a customer who is interested in matters before, regulated by, or doing or seeking to do business with, the official's or employee's public agency. The payments received from these parties are of such a character as to improperly influence the official or employee with respect to the performance of his official duties regarding the source of the payments. See, e.g., Adv. Ops. No. 83-007 (an employee of the Board of Cosmetology is prohibited from selling products to regulated salons) and 93-014 (a member of a board of education is prohibited from selling annuities to school district employees).

The Ethics Commission has explained that, in certain situations, a public official or employee who engages in private employment or business activity may withdraw from consideration of matters as a public official or employee that could pose a conflict of interest. Adv. Ops. No. 89-006 and 89-010. A public official's or employee's withdrawal from consideration of issues concerning parties who are interested in matters before, regulated by, or doing or seeking to do business with his own public agency may be accomplished only if such a withdrawal: (1) does not interfere with the official's or employee's performance of his assigned duties; and (2) is approved by his employing agency. Adv. Op. No. 90-002. However, the Commission also explained that some high-level public officials and employees possess unique authority from which they cannot withdraw and therefore they are prohibited from pursuing certain kinds of private employment or business activity. Adv. Op. No. 92-009.

Application of R.C. 102.03(D) and (E)

R.C. 102.03(D) and (E) prohibit you from being compensated for consultative services by HCHG unless you are able to fully withdraw from all matters that affect HCHG. Your withdrawal would have to be approved by your supervisor and the Chief Legal Counsel at BGSU. Further, it must be clear that your withdrawal would not interfere in any way with the duties and responsibilities of your public position.

While you have not described your specific job duties at BGSU, you have stated that you are the director of the Student Health Service. You have also not stated whether, or to what extent, you were involved in identifying, selecting, or awarding the BGSU contract to HCHG. In his letter, Mr. Menter explained that you were not a signatory to the contract between BGSU

and HCHG, but does not provide any further information about your role in the contract award or interaction with HCHG as the director of Student Health Service.

However, as Director of the Student Health Service, your responsibilities would include working with, assessing the services provided by, and reviewing the compensation provided to, HCHG under its contract with Student Health Service. You may also be in a position to determine whether, and to what extent, the Student Health Service should continue its contract with HCHG. In a resolution adopted on January 21, 2005, the BGSU Graduate Student Senate recognized your work regarding billing for Student Health Service. Resolution 2004.F2. In his letter, Mr. Menter notes that it is your experiences with HCHG that would make you a valuable consultant to HCHG. Further, one of the functions for which HCHG would pay you as a consultant is to provide input, "good or bad," to HCHG about the services it provides to BGSU.

Considering that HCHG has been retained specifically to assist Student Health Service, it would be impossible for you, as the Director of Student Health Service, to fully withdraw from all matters concerning HCHG. Because you cannot fully withdraw from matters affecting HCHG, the Ethics Law prohibits you from being paid to serve as a consultant for HCHG.

Application of R.C. 102.03(D) and (E) to Accepting Other Things of Value

Your second and third questions are whether the law prohibits you, or other professional staff of Student Health Service, from accepting travel, meals, lodging, and other expenses associated with medical conferences and attending HCHG sponsored "user's group" meetings.

The Commission has issued a number of opinions advising public officials and employees about the Ethics Law as it applies to the question of receiving things of value, including meals, travel, and conference and registration fees. See, e.g., Adv. Ops. No. 80-004, 92-018, 2001-03, and 2001-04. Those opinions consider R.C. 102.03(D) and (E), which prohibit you from soliciting, accepting, or using your position to secure anything of value from a party that is doing or seeking to do business with your public agency. HCHG has a contract with BGSU. Therefore, you and other Student Health Service staff are prohibited from accepting, from HCHG, conference fees, travel, meals, lodging, and other expenses associated with attending medical conferences or meetings.

The Commission considered the question of users groups in Advisory Opinion No. 2003-03. In that opinion, the Commission explained that the law does not prohibit an official or employee of a public college or university from serving, without compensation, on a customer advisory board; however, 102.03 (D) and (E) prohibit the official or employee from soliciting, accepting, or using his position to secure travel, meals, and lodging to attend meetings of the board. The conclusions in Advisory Opinion No. 2003-03 would apply to you and the other employees of BGSU Student Health Service. Therefore, while you are not prohibited from belonging to a users group for HCHG, or from attending meetings of the users group, you are prohibited from accepting payments for travel, meals, and lodging from HCHG in connection with the users group meetings. BGSU must pay all travel and related expenses in order for you to attend the meetings.

You should also note R.C. 102.03(F) prohibits a person from promising or giving 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. This prohibition applies to any person, which is defined to include any individual, corporation, partnership, association, or other similar entity. R.C. 1.59. HCHG is a "person" for purposes of R.C. 102.03(F). While the restrictions discussed above apply to a public official or employee, and prohibit solicitation or mere acceptance of "anything of value," R.C. 102.03(F) imposes a parallel restriction on the private sector party that is providing things of value. Therefore, R.C. 102.03(F) prohibits HCHG from providing or offering travel, meals, lodging, and other expenses or costs associated with conferences and attending meetings to you and your colleagues employed by the university.

Other Considerations

As noted above, it is not clear whether or to what extent you were involved, as Director of the Student Health Service, in the identification or selection of HCHG as a contractor to the Student Health Service. If you were involved in those matters, or if you participate in any way in the review, compensation, or future contract awards to HCHG, and you were to consider employment or consulting with HCHG either during your public service, or for one year thereafter, your actions could implicate the prohibitions set forth in the public contract law (R.C. 2921.42). As long as you have not accepted, and do not intend to accept, employment or consulting opportunities with HCHG, as prohibited by R.C. 102.03(D) and (E) (set forth above), this opinion does not need to discuss the prohibitions in R.C. 2921.42 further. However, if you do intend to consider accepting any employment or consulting opportunities with HCHG, either during or after your public service, please contact the Commission for further guidance.

Finally, it is important to note that, although a public agency cannot create a policy or rule that is less restrictive than the prohibitions in the Ohio Ethics Law and related statutes, an agency may impose a policy or rule that is more restrictive than the Ethics Law. Therefore, you and the other employees of the Student Health Service may also be subject to additional policies or rules governing BGSU personnel. For more guidance about BGSU's policies and rules, you should consult legal counsel at BGSU.

Conclusion

As explained above, R.C. 102.03(D) and (E) prohibit you, as the Director of Student Health Service at BGSU, from soliciting, accepting, or using your position to secure anything of value, including compensation for consultative services and expenses associated with attending meetings or funding for medical conferences, from any person doing or seeking to do business with the university, including HCHG. R.C. 102.03(D) and (E) also prohibit any other official or employee of BGSU from accepting expenses for attending meeting or funding for medical conferences from any person doing or seeking to do business with BGSU, including HCHG. Furthermore, HCHG is bound by the associated provision set forth in R.C. 102.03(F), which prohibits any person from promising or giving a public official or employee things of value.

Dr. Glenn Egelman
June 8, 2005
Page 7

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on June 2, 2005. The Commission commends both you and Mr. Menter for seeking guidance before acting on the matters you described.

This informal 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. Attached is an information sheet on the subject of accepting gifts, meals, entertainment, and other things of value and Adv. Op. No. 2003-03, which will provide more information on the subject. If you have any questions or desire additional information, please feel free to contact this Office again.

Sincerely,

A handwritten signature in cursive script that reads "Karen R. King". The signature is written in black ink and is positioned above the typed name.

Karen R. King
Staff Advisory Attorney

Encl.: Accepting Gifts, Meals, Entertainment, and Other Things of Value (Information Sheet #7)
Advisory Opinion No. 2003-03

cc: Mr. Andrew Menter