

OHIO ETHICS COMMISSION

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David E. Freel, *Executive Director*

November 2, 2005 Informal Opinion 2005-INF-1102-1

John Gillam
Family Service Manager
Forest Lawn Memorial Gardens



Dear Mr. Gillam:

In letters received by the Ohio Ethics Commission on July 15, 2005 and July 25, 2005, you asked if the Ethics Law and related statutes prohibit Forest Lawn Memorial Gardens (Forest Lawn) from offering or giving a complimentary burial package to the family of a public firefighter, law enforcement officer, or emergency medical technician that has fallen in the line of duty.

You provided several attachments with your letters including: a National Public Servants Program brochure, a press release entitled "*Dignity Memorial Provides Dignified and Honorable Burials for Columbus Public Servants Who Fall in the Line of Duty*," an example of a public servant's family breakdown of services and costs for a pre-planned burial package, and a Dignity Memorial Certificate of Credit.

Brief Answer

As explained more fully below, Forest Lawn is not prohibited from offering or giving a complimentary burial package to the family of a deceased public firefighter, law enforcement officer, or emergency medical technician who has fallen in the line of duty.

Facts

Forest Lawn is a cemetery located in Columbus, Ohio, and a member of the Dignity Memorial network of funeral service providers. Dignity Memorial providers across the nation have created the "Public Servants Program" to provide interment packages, at no cost, to family members of public emergency service personnel who fall in the line of duty. You explained that Forest Lawn would like to make this program available to public servants in Columbus. The program would provide the family of a public firefighter, law enforcement officer, or emergency medical technician, who falls in the line of duty, with either a complimentary full burial or cremation burial. The program includes one right of interment valued up to \$1,095.00, one opening and closing service, one cemetery burial vault valued up to \$895.00 or one cremation burial vault valued up to \$250.00, and one memorial valued up to \$1,168.80. You noted that the family would need to arrange a funeral service with a separate funeral provider.

Finally, you have stated that you wish to provide information about this benefit as part of a marketing package for pre-planned burial services. You also explained that Forest Lawn wishes to market its "Public Servants Program" through the Department of Public Safety and local hospitals with emergency medical technicians. You explained that if one or all of the items provided by the program have been pre-arranged with Forest Lawn, Forest Lawn will refund the amount paid, excluding the interment right, to the public servant's next of kin upon verification of the public servant's death in the line of duty. You have explained that Forest Lawn will offer the benefit to the family of any of these fallen officers regardless of whether the officer had, or a family member has, a pre-planned burial package. You asked if the Ethics Law and related statutes prohibit Forest Lawn from offering this program to the family of a public firefighter, law enforcement officer, or emergency medical technician who falls in the line of duty.

Conflict of Interest Prohibitions—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.

The term "public official or employee" is defined, in R.C. 102.01(B), as any person elected or appointed to any office with, or employed by, any public agency. A "public agency" is defined, in R.C. 102.01(C), as:

[T]he general assembly, all courts, any department, division, institution, board, commission, authority, bureau or other instrumentality of the state, a county, city, village, township, and the five state retirement systems, or any other governmental entity.

Therefore, any individual who is elected or appointed to any office of, or employed by, any entity identified as a "public agency," as that term is defined above, including firefighters, law enforcement officers, and emergency medical personnel, is considered a "public official or employee" for purposes of R.C. 102.03(D), (E), and (F). See generally Ohio Ethics Commission Advisory Opinions No. 87-005, 89-013, and 89-014.

The term "anything of value" is defined, for purposes of R.C. 102.03 in R.C. 102.01(G) and 1.03, to include money, goods, interests in realty, and every other thing of value. The Ethics Commission has held that gifts, gratuities, and discounts also constitute things of value for purposes of R.C. 102.03. (See Adv. Ops. No. 86-003, 90-001, 91-010, 92-015.) Additionally, the Commission has determined that, for purposes of R.C. 102.03, the word "substantial" means "of or having substance, real, actual, true, not imaginary; of considerable worth or value; important." Adv. Op. No. 89-014 (quoting Adv. Ops. No. 75-014 and 76-005). Items which are de minimis or nominal in value could also have a substantial cumulative value over time. Complimentary interment services of the type and value that you have described are a substantial thing of value for purposes of this section.

The Ethics Law establishes 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. Since Forest Lawn is located in the same community served by the public firefighters, law enforcement officers, and emergency medical personnel, it is interested in matters before or regulated by their public agencies. See Adv. Op. No. 92-015.

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

As indicated above, 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. Forest Lawn is a "person" for purposes of R.C. 102.03(F). Since Forest Lawn is interested in matters before or regulated by their public agencies, if Forest Lawn were to offer or promise anything of value directly to the public firefighters, law enforcement officers, and emergency medical technicians, it would be of such a character as to manifest an improper influence on those public officials or employees. Adv. Op. No. 92-015.

You have asked if Forest Lawn is prohibited from giving free burial services to the surviving family members of public officials or employees who have fallen in the line of duty. Because the service will be offered to the family of a deceased public official or employee and cannot manifest a substantial and improper influence upon the public official or employee, as prohibited by R.C. 102.03, the Ethics Law and related statutes do not prohibit Forest Lawn from offering this service.

R.C. 102.03(D) and (E) imposes parallel restrictions on public officials and employees. The Ethics Commission has consistently held that a public official or employee may not accept, solicit, or use his or her authority to secure anything of value for family members, where the thing of value is of such character as to manifest a substantial and improper influence upon the official or employee with respect to his or her duties. See Adv. Ops. No. 79-008, 80-003, 84-010, 85-011, 87-004, 88-004, and 88-005. In this instance, where complimentary burial services will be offered to surviving family members of a deceased public official or employee, no public official or employee will be securing an improper thing of value as prohibited by R.C. 102.03(D) and (E).

In concluding that Forest lawn is not prohibited by R.C. 102.03 from offering free burial services to the family members of fallen firefighters, law enforcement officers, and emergency medical personnel, it must be emphasized that private companies are prohibited from promising, offering, or giving anything of value with the purpose of improperly influencing public officials or employees or members of their family, with respect to the duties of the public official or employee. Adv. Op. No. 89-002. It must be clear, in any marketing materials, that public officials and their family members need not pre-plan burial services with Forest Lawn in order to qualify for "Public Servants Program." Also, designated public officials and employees and their public employer affiliations should not be used in marketing materials so that no public agency, official, or employee is endorsing a commercial product. Likewise, public officials and employees are prohibited from soliciting or accepting gifts to improperly influence them with respect to the discharge of their official duties, and from basing any official decisions, actions, or instructions on an offer or promise made to the public officials or employees or to those with which the officials or employees have a family or business relationship. Adv. Op. No. 89-002. Such conduct by a private company or a public official or employee would be in violation of R.C. 102.03, and possibly other criminal statutes that are outside the scope of the Ethics Commission's jurisdiction. Adv. Op. No. 89-002.

As a final matter, this opinion should not be interpreted as permitting the payment of supplemental compensation to a public servant. R.C. 2921.43(A)(1) prohibits a public servant from soliciting or accepting compensation, other than as allowed by law, to perform his or her official duties, or as a supplement to his or her public compensation, and prohibits any person from promising or giving such compensation to a public servant. The Commission has held that a public servant who receives a discount which is provided as a community service acknowledgement would realize a personal pecuniary benefit or gain from the discount and thus would receive "compensation" other than as allowed by law for the general performance of his or her public duties and as a general supplement to his or her public compensation. See Adv. Op. No. 92-015. In the instant situation, the public servant is not soliciting or receiving any personal pecuniary benefit or gain from complimentary burial services offered to the public servant's family members after the public servant's death.

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Conclusion

As explained above, Forest Lawn is not prohibited from offering or giving a complimentary burial package to the family of a deceased public firefighter, law enforcement officer, or emergency medical technician who has fallen in the line of duty.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on October 28, 2005. The Commission commends you for requesting guidance before taking any actions that could be prohibited by 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 feel free to contact this Office again.

Sincerely,


Karen R. King
Staff Advisory Attorney