

# OHIO ETHICS COMMISSION

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David E. Freel, *Executive Director*

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November 9, 2005

Informal Opinion 2005-INF-1109

Alex R. Arshinkoff  
Summit County Board of Elections

Dear Mr. Arshinkoff:

On July 29, 2005, the Ohio Ethics Commission received a copy of a letter you sent to L. Patricia Simmons, the President and CEO of the Akron Zoo. In that letter, you explained to Ms. Simmons that, because you are a member of the Summit County Board of Elections which has authority related to the Akron Zoo (Zoo), you were returning four complimentary regular admission tickets provided to you by the Zoo. The total value of the tickets provided was \$26.00 (\$8.00 each for two adults' tickets and \$5.00 each for two children's tickets).

In your letter, you explained that you intended to ask the Ohio Ethics Commission, the county prosecuting attorney, and the Auditor of State for guidance on whether the law prohibits the Zoo from giving free tickets and special access tours to election board members and other public officials. You specifically list "city council members, county council members, state legislators, mayors, county officials and other public officials who transact business with the Akron Zoo."

After you sent your letter to the Zoo, the Commission was contacted by Ms. Simmons, who also requested guidance on this and related matters. The Commission received a letter, with additional information, from Ms. Simmons on August 26, 2005.

Although the Commission did not receive a request, other than the copy of your letter to Ms. Simmons, the Commission will treat your letter and Ms. Simmons's letter, as requests for an advisory opinion, and will provide guidance to you and the Zoo about the application of the Ohio Ethics Law, in situations of the kind you described, to those public officials and employees who are subject to the Ohio Ethics Commission's jurisdiction. If the Zoo would like to request guidance about the application of the law to members and employees of the state general assembly, or to judges and judicial employees, it can contact the appropriate ethics commission for those officials and employees. Contact information for both agencies is attached.

**Brief Answer**

As explained more fully below, the Ohio Ethics Law and related statutes do not prohibit you from accepting four regular admission tickets from the Zoo, unless the tickets are being provided to you in return for the performance of some public duties. However, because of the relationship between the Board of Elections and the Zoo, the Ethics Law would prohibit you from accepting a gift of a substantial value, or gifts that have a substantial cumulative value, from the Zoo. Of course, nothing prohibits any public official or employee from adopting a higher standard of personal conduct and declining an item of any value offered by a person or entity that has business dealings with the official or employee in his or her official capacity.

The Ethics Law does prohibit the Zoo from offering or giving large numbers of tickets to public officials and employees if the Zoo is doing or seeking to do business with, regulated by, or interested in matters pending before the public agencies they serve. However, the Ethics Law does not prohibit the Zoo from: (1) inviting a public official or employee to attend the opening of a new exhibit, ground-breaking or ribbon-cutting for new Zoo facilities, or other similar event, in his or her official capacity, particularly where the official or employee is performing a ceremonial function; or (2) making free or reduced-cost admission to the Zoo available to a large class of public officials or employees, such as all public servants for all public agencies in Summit County, just as it might for private sector employees, with no regard to the public agencies they serve or the duties they perform.

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

Your question raises issues under R.C. 102.03(D) and (E), which 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.

For purposes of R.C. 102.03(D) and (E), a "public official or employee" includes any elected or appointed officer and any employee of any state department or agency, a county, city, village, township, or other governmental entity. R.C. 102.01(B) and (C). This would include any elected or appointed member of a county or city board, including a city or county council. It also includes any member of a county or city board that exercises sovereign authority, including members of county boards of elections. See Ohio Ethics Commission Advisory Opinions No. 87-002, 88-005, and 96-002. Finally, the restriction also applies to any state, county, city, or

other governmental employees. The restrictions in R.C. 102.03(D) and (E) would apply to you, as a member of a county board of elections.

“Anything of value” is defined to include money, goods, chattels, and “every other thing of value.” R.C. 1.03; 102.01(G). Tickets to entertainment venues or events, such as the Zoo, are included within the definition of anything of value for purposes of the provisions of R.C. 102.03(D) and (E). Adv. Ops. No. 95-001 and 2001-03.

### **Securing, Soliciting, or Accepting Anything of Value**

R.C. 102.03(D) prohibits a public official or employee from using his position to secure anything of value, including tickets, if the thing of value would have a substantial and improper influence upon him with respect to the performance of his duties. R.C. 102.03(E) prohibits a public official or employee from soliciting or accepting anything of value, including tickets, if the thing of value would have a substantial and improper influence upon him with respect to the performance of his duties.

The facts and circumstances of each situation determine whether a gift, meal, entertainment, and other thing of value could have a “substantial” and “improper” influence upon an official in the performance of his duties. The Ethics Commission has explained that some things of value, because of their source, would have an “improper” influence upon an official in the performance of his duties. Adv. Op. No. 86-011. A person, company, or other private or public entity or association that is regulated by, interested in matters before, or doing or seeking to do business with, a public agency is an improper source of gifts, meals, entertainment activities, and other things of value offered to the officials of that agency. *Id.*

In the situation you have described, various public agencies may have relationships with the Akron Zoo. The Akron Zoo is a non-profit 501(c)(3) corporation; however, it does receive public funds. The Zoo receives tax levy funds that are administered through Summit County. County Council votes to put any levy on the ballot and the Board of Elections approves the ballot language. The levy funds are administered by the County Treasurer’s Office.

The Zoo is located in the City of Akron and is subject to regulation, including fire inspection and building code regulation, by the City. The Commission understands that the Zoo has a contractual relationship with the Akron Metropolitan Housing Authority to lease property for a Zoo expansion.

The Zoo is therefore doing business with, regulated by, or interested in matters that will be before, these public agencies. There may be other public agencies with which the Zoo has similar kinds of relationships. Because of the Zoo’s official relationships with these agencies, the Zoo is an “improper” source of anything of value provided to officials and employees of the agencies, if the thing of value could have a substantial influence on the officials and employees with respect to the performance of their official duties. Adv. Op. No. 95-001. However, the Zoo is not an improper source of things of value to all public officials and employees in the Akron

area, including officials and employees of cities other than Akron, or of villages, townships, school districts, and other public agencies in the County, as long as the agencies have no official relationship of any kind (such as contracts or regulatory oversight) with the Zoo.

The question, then, is whether free admission tickets given by the Zoo to public officials and employees of public agencies with which the Zoo is doing or seeking to do business or by which the Zoo is regulated could have a substantial influence on the officials and employees with respect to the performance of their duties such that R.C. 102.03(D) and (E) would prohibit acceptance of the tickets.

Some things of value, because of their nature, could have a "substantial" influence upon an official in the performance of his duties. Adv. Op. No. 86-011. Some gifts, meals at expensive restaurants, entertainment activities, such as exclusive golf outings and season tickets to the games of a professional sports team, are of a substantial value. Adv. Ops. No. 95-001, 2001-03, and 2001-04. Jewelry, discounts on major consumer items, and travel, meal, and lodging expenses are also of substantial value. Adv. Ops. No. 89-014, 92-015, and 2001-04.

While the Commission has opined that season tickets to the games of a professional sports team are substantial in value, whether individual tickets to an event or entertainment value such as the Zoo are substantial in value has not been asked. In this situation, the items provided were four regular admission tickets, with a total face value of \$26.00. The value of these four tickets is not substantial for purposes of R.C. 102.03(D) and (E). Note, however, that it is possible that a large number of items of nominal value could reach a substantial cumulative value. See Adv. Op. No. 89-014. If the Zoo were to provide four regular admission tickets to the same official or employee on multiple numbers of occasions, the value of the tickets would accumulate to be substantial.

Therefore, even though Summit County has official interactions with the Zoo, R.C. 102.03(D) and (E) do not prohibit you, as a member of the Summit County Board of Elections, from accepting four free admission tickets of the kind you have described.

#### **Supplemental Compensation—R.C. 2921.43(A)**

It must always be clear, however, that the tickets or other items of value are not provided to you as compensation for or to perform any act in your public capacity or generally perform the duties of your public position. R.C. 2921.43(A) prohibits a public servant from accepting any item, and any person from promising or giving a public servant any item, including a gift of substantial value, that is intended to be provided in exchange for the performance of the public servant's public duties. See Adv. Op. No. 90-001. R.C. 2921.43(A)(1) also prohibits any person from promising or giving to a public servant any such outside compensation. Adv. Ops. No. 89-014 and 90-001.

A gift of substantial value that a regulated party provides to any public official or employee in return for the performance of a particular duty, act, or service that the official or employee is required to perform, or for the general performance of the duties of the official or employee, is consideration in the form of a gift given to the official or employee for performing his or her public duties. Adv. Op. No. 2001-03. See also State v. Capko, No. 56814, 1990 Ohio App. LEXIS 1287, at \*5 (Cuyahoga County 1990) (quoting State v. Beros, No. CA-633 (Guernsey County 1981) (the bribery statute [R.C. 2921.02(B)] prohibits a public servant from receiving money to perform his job duties 'wrong,' while R.C. 2921.43(A) prohibits a public servant from receiving money to perform his job duties 'right').

Therefore, R.C. 2921.43(A) prohibits any person or entity, including the Zoo, from promising or giving to a public servant, and prohibits any public official or employee from soliciting or accepting, free regular admission tickets to the Zoo if the tickets are provided to the official or employee as compensation for the performance of his or her public job duties. This does not appear to be the case in the situation you have described.

**Zoo Providing Tickets to Numerous Public Officials or Employees—R.C. 102.03(F)**

R.C. 102.03 (F) provides that 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." A "person" includes any individual, corporation, partnership, association, or other similar entity. R.C. 1.59. The Zoo is "person," for purposes of R.C. 102.03(F), and is subject to the prohibition in the statute. As noted above, "anything of value" would include free regular admission tickets to the Zoo.

The Ethics Commission has stated that a person or entity that is doing or seeking to do business with, interested in matters before, or regulated by a public agency is an improper source of anything of value, for purposes of R.C. 102.03(F), to the officials and employees of the agency. Adv. Ops. No. 89-006, 90-009, and 95-001. The Zoo is an improper source of things of value for a public official or employee who is elected or appointed to, or employed by, any public agency with which it is doing or seeking to do business or by which it is regulated.

The question raised to the Commission was whether the Ethics Law prohibits the Zoo from offering or giving to you, or prohibits you from accepting, four regular season Zoo admission tickets, valued at \$26.00. As discussed above, R.C. 102.03(D) and (E) do not prohibit you from accepting the four tickets, because their value is not substantial, unless the tickets are offered to you as compensation for the performance of your job duties.

Because the application of R.C. 102.03 is dependent upon the facts and circumstances, however, if the Zoo is providing these tickets to a large number public officials and employees who serve public agencies with which the Zoo is doing or seeking to do business or by which the Zoo is regulated, R.C. 102.03(F) can be implicated. 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.

If the Zoo were to give four regular admission tickets to a significant number of public officials or employees of Summit County, the City of Akron, or the Akron Metropolitan Housing Authority, a substantial cumulative value may exist. The aggregate value of tickets provided to a large number of officials or employees for their personal use, based on the cost of the tickets and the number of public officials or employees receiving tickets, may be substantial rather than nominal or de minimis in nature.

In such a case, because of the substantial cumulative value of the tickets, R.C. 102.03(F) would prohibit the Zoo from offering or giving sets of tickets to a large number of public officials or employees if the Zoo is doing or seeking to do business with, regulated by, or interested in matters before the public agency they serve. This would include Summit County, the City of Akron, the Akron Metropolitan Housing Authority, and any other public agency with which the Zoo has these kinds of relationships. (While the Ethics Law prohibits the Zoo from making gifts of tickets to the Metropolitan Housing Authority for the use of Authority officials and employees, the Zoo is not prohibited from providing tickets to the Authority that are given for, and used by, residents served by the Authority.)

In a letter to the Ethics Commission, Pat Simmons, President and CEO of the Zoo, noted that the Zoo provides many free tickets every year. For example, the Zoo provides more than 1,000 tickets to radio stations for distribution, 500 tickets to Tickets for Kids, which assists underprivileged children in Summit County, 1,000 tickets to Keep Akron Beautiful volunteers, and 3,600 tickets to Junior Achievement. While such donations are commendable, the fact that the Zoo provides tickets to individuals other than public officials and employees does not control the application of R.C. 102.03(F). Clearly, the Ethics Law does not prohibit these kinds of gifts.

It should be noted that R.C. 102.03(F) does not prohibit the Zoo from offering free regular admission tickets to officials and employees of public agencies with which it does not have these kinds of relationships. Further, R.C. 102.03(F) does not prohibit the Zoo from asking any public official or employee, serving any public agency, to attend the opening of a new exhibit, a ribbon cutting or ground breaking for new Zoo facilities, or other similar event in his or her official capacity, particularly where the official or employee would be performing a ceremonial role.

Finally, R.C. 102.03(F) does not prohibit the Zoo from offering free or reduced-cost admission to the Zoo to a large class of public officials and employees, such as officials and employees of all public agencies in the County, without limiting the offer to specific public agencies or specific public officials or employees. Adv. Op. No. 2001-08. In such a case, R.C.

102.03(D) and (E) would not prohibit the officials and employees, including officials and employees of agencies that have regulatory or other relationships with the Zoo, from accepting the benefits. Id.

### **Conclusion**

As explained more fully above, the Ohio Ethics Law and related statutes do not prohibit you from accepting four regular admission tickets from the Zoo, unless the tickets are being provided to you in return for the performance of some public duties. However, because of the relationship between the Board of Elections and the Zoo, the Ethics Law would prohibit you from accepting a gift of a substantial value, or gifts that have a substantial cumulative value, from the Zoo. Of course, nothing prohibits any public official or employee from adopting a higher standard of personal conduct and declining an item of any value offered by a person or entity that has business dealings with the official or employee in his or her official capacity.

The Ethics Law does prohibit the Zoo from offering or giving large numbers of tickets to public officials and employees if the Zoo is doing or seeking to do business with, regulated by, or interested in matters pending before the public agencies they serve. However, the Ethics Law does not prohibit the Zoo from: (1) inviting a public official or employee to attend the opening of a new exhibit, ground-breaking or ribbon-cutting for new Zoo facilities, or other similar event, in his or her official capacity, particularly where the official or employee is performing a ceremonial function; or (2) making free or reduced-cost admission to the Zoo available to a large class of public officials or employees, such as all public servants for all public agencies in Summit County, just as it might for private sector employees, with no regard to the public agencies they serve or the duties they perform.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on September 19, 2005. The Commission commends you and the Zoo for requesting guidance.

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

cc: Pat Simmons, President and CEO of the Akron Zoo