

OHIO ETHICS COMMISSION

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David E. Freel, *Executive Director*

February 23, 2006

Informal Opinion 2006-INF-0223

Lorajean F. Besse
Hope in Heels

Dear Ms. Besse:

In a letter received by the Ohio Ethics Commission on July 26, 2005, you asked if the Ethics Law and related statutes prohibit a private foundation, Hope in Heels (the Foundation), from granting a monetary award to a public victim advocate and intake worker or investigator in recognition of his or her commitment to victims of violent crime.

Brief Answer

As explained more fully below, R.C. 2921.43(A)(1) prohibits the Foundation from promising or giving a monetary award to a public victim advocate and intake worker or investigator, in recognition for the performance of the individual's public duties or as a supplement to his or her public compensation.

Facts

In your letter, you explained that five women in your family, including yourself, have formed the Foundation. The five of you will sit on the Foundation's board of directors. Each December, the Foundation will recognize a prosecutor, a victim advocate, and an intake worker or investigator from a County Department of Job and Family Services for his or her excellence, consistency, sensitivity, and determination in working with victims of violent crime. You explained that the Foundation's selection committee will choose the three honorees from nominations solicited from various non-profit organizations and local agencies, including law enforcement and prosecutors' offices, and hospitals.

You indicated that each honoree, with the exception of the prosecutor, will receive recognition including a monetary award of approximately \$1,000. You asked if the Ethics Law and related statutes prohibit the Foundation from providing a monetary award to a victim advocate and intake worker or investigator in recognition of his or her service to victims of crime, in light of the fact that one or both of the recipients may work for a county agency.

Supplemental Compensation

R.C. 2921.43(A) applies to the question you have raised. R.C. 2921.43(A)(1) provides:

- (A) No public servant shall knowingly solicit or accept and no person shall knowingly promise or give to a public servant either of the following:
- (1) Any compensation, other than as allowed by divisions (G), (H), and (I) of section 102.03 of the Revised Code or other provisions of law, to perform the public servant's official duties, to perform any other act or service in the public servant's public capacity, for the general performance of the duties of the public servant's public office or public employment, or as a supplement to the public servant's public compensation. (Emphasis added.)

The term "public servant" is defined in R.C. 2921.01(B) to include "any public official." A "public official" is defined, in R.C. 102.01(B), as any person elected or appointed to any office with, or employed by, any public agency. Therefore, victim advocates, intake workers, and investigators employed by public agencies are public servants for purposes of R.C. 2921.43(A).

R.C. 2921.43(A)(1) prohibits any person from promising or giving to public servants "compensation," other than as allowed by R.C. 102.03(G) through (I)¹ or other provision of law, for: (1) performing any duty, act, or service required in their official capacity as public servants; (2) the general performance of their public duties; or (3) as a supplement to their public compensation. Adv. Op. No. 90-001. The term "person" is defined to include any individual, corporation, partnership, association, or other similar entity. See R.C. 1.59. The Foundation, and its board members, are "persons" for purposes of this restriction.

The word "compensation" is not defined for purposes of R.C. Section 2921.43. In Advisory Opinion No. 92-014, the Ethics Commission held:

A primary rule of statutory construction is that words used in a statute must be construed according to rules of grammar and common usage. See R.C. 1.42. Furthermore, statutes "must be construed in the light of the mischief they are designed to combat." City of Mentor v. Giordano, 9 Ohio St. 2d 140, 144 (1967). "Compensation" is defined as "payment for services: esp., wages or remuneration." See Webster's New World Dictionary 289 (2nd College Ed. 1972).

Prior to the time that the Ohio Ethics Commission was empowered to interpret R.C. 2921.43, the Attorney General, in Opinion No. 84-019, addressed the prohibition of R.C. 2921.43(A)(1). In the opinion, the Attorney General stated:

¹ The exceptions set forth in R.C. 102.03(G) through (I) concern campaign contributions, and under certain circumstances, honoraria and travel, meal, and lodging expenses incurred in connection with a personal appearance or speech, or attendance at conferences, seminars, and similar events, and are not applicable to your question.

R.C. 2921.43(A) is a codification of the common law rule that a public officer may not receive remuneration other than that allowed by law for the performance of his official duties. (Citations omitted.) Public officials and employees are not permitted to receive payment other than that provided by law for performing those duties for which they are responsible in their official capacity. See generally State v. McKelvey, 12 Ohio St. 2d 92; 95, 232 N.E.2d 391, 393 (1967) (“a public official cannot use his position for private profit”). See also State v. Livesay, 91 Ohio Misc. 208 (Jackson County February 19, 1988).

It is apparent that the use of the word “compensation” is R.C. 2921.43 addresses situations where a public servant would realize a pecuniary gain or benefit, other than as allowed by law, which is provided to the public servant for performing any duty, act, or service in his or her official capacity as a public servant, for the general performance of his or her public duties, or as a supplement to his or her public compensation. See Ohio Ethics Commission Advisory Opinions No. 89-012 (payment for legal services required to be performed by a law director), 89-013 (travel, meal, and lodging expenses for travel on state business), 91-010 (“frequent flyer” benefits earned through travel on state business). The prohibition against a public official receiving compensation for the performance of his or her public duties prevents the public official from being in a position of serving two masters and helps to ensure his or her objectivity. Adv. Op. No. 89-013. See generally Somerset Bank v. Edmund, 76 Ohio St. 396 (1907); 1918 Ohio Op. Att’y Gen., Vol. II, No. 1569, p. 1428.

In Advisory Opinion No. 92-015, the Commission concluded that discounts provided by a city retailer to members of the city police department, as a community service acknowledgement and in recognition of the members of the police department was “supplemental compensation,” because it was provided for the general performance of the public duties rendered by members of the city police department and as a supplement to their public compensation. Therefore, the Commission concluded that R.C. 2921.43(A) prohibited a member of a city police department from receiving a discount provided to the employee in acknowledgment and recognition of the work performed by the public employee. Adv. Op. No. 92-015. (The Commission concluded that the discount was also prohibited by R.C. 102.03(D) and (E) because it was a substantial thing of value provided to the police officers by a business whose owner was regulated by and interested in matters before the city.)

In the instant situation, the Foundation proposes to offer a monetary award to a victim advocate and intake worker or investigator in recognition of his or her “excellence, consistency, sensitivity, and determination in working with victims of violent crime.” You noted in your letter that there is a “chance” that one or both of the award recipients may work for a county agency. Also, in explaining why the Foundation chose the month of December to distribute the award, you noted that the award recipients are “extremely underpaid” and the Foundation wants to “give them a little extra money to help them get through the holidays.” Based on the information you provided, it does not appear that the award is intended to be given for the performance of a particular duty, act, or service. However, it is apparent that a public victim advocate, intake worker, or investigator that receives a monetary award in recognition of the work he or she does with victims of crime 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. Therefore, R.C. 2921.43(A)(1) prohibits the Foundation from promising or giving, and prohibits a public servant from accepting, such an award.²

Although R.C. 2921.43(A)(1) prohibits the Foundation from giving an award of the type you have described, the Foundation may recognize a public servant in a manner that would not be prohibited by the Ethics Law. For instance, the Foundation would not be prohibited from honoring a county victim advocate, intake worker, or investigator with a certificate or other recognition of appreciation, provided that the items are of nominal or de minimis value and do not result in a personal pecuniary benefit to the recipient and the total cost incurred by the Foundation to make the recognition of appreciation is not substantial in nature. See Adv. Op. No. 92-015.

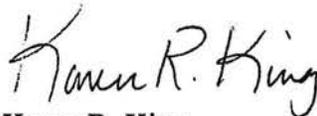
Conclusion

As explained more fully above, R.C. 2921.43(A)(1) prohibits the Foundation from promising or giving a monetary award to a public victim advocate and intake worker or investigator, in recognition for the performance of the individual's public duties or as a supplement to his or her public compensation.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on February 17, 2006. 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

² Your question also raises issues under R.C. 102.03(E) and (F) which prohibit a public official or employee from accepting, and any person from promising or giving, 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. However, because the Commission has determined that the award is prohibited under R.C. 2921.43(A)(1), it is not necessary for this opinion to discuss R.C. 102.03(E) and (F) further.