

OHIO ETHICS COMMISSION

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David E. Freel, *Executive Director*

June 29, 2006

Informal Opinion 2006-INF-0629-3

Lisa Hyre Timms
Chief Legal Counsel
Office of the Treasurer of State
[REDACTED]

Dear Ms. Timms:

On March 28, 2006, the Ohio Ethics Commission received your letter requesting an advisory opinion. In your letter, you have asked whether the Ethics Law prohibits a person who is appointed by the Treasurer of State to serve as an investment expert on a state retirement system board of trustees, or the Bureau of Workers' Compensation Oversight Commission, from also serving as an instructor at an educational seminar conducted by the Treasurer's Office. You have explained that the investment expert would not be compensated. You have also asked whether the law prohibits the investment expert from accepting the lunch and refreshments that are provided to all attendees at the seminar.

Brief Answer

As explained more fully below, the Ethics Law does not prohibit the Office of the Treasurer from asking an investment expert who serves as a member of the state retirement systems or the Bureau of Workers' Compensation Oversight Commission, from acting as an uncompensated instructor at an educational seminar conducted by the Treasurer's Office as long as the expert is participating in his or her individual capacity and not as a member of the public board or commission he or she serves. The Law does not prohibit the Office from giving, or prohibit an investment expert from accepting, the lunch and refreshments offered to all attendees at the seminar.

Facts

By way of history, you have explained that the Treasurer of State is required to appoint an investment expert member to the Boards of Trustees for the five state retirement systems. See R.C. 145.04, 742.03, 3307.05, 3309.05, and 5505.04. The Treasurer also appoints one investment expert member to the Bureau of Workers' Compensation Oversight Commission (Oversight Commission). R.C. 4121.02(D).

The Treasurer's Office (Office) also conducts the Center for Public Investment Management (CPIM), a program that provides statutorily mandated continuing education to local-level treasurers or their equivalents. The Office would like to ask the appointed investment experts to provide instruction to attendees at CPIM seminars. The investment experts would not be compensated to serve as instructors. However, the Office does offer lunch and refreshments to all attendees at CPIM seminars. You have asked whether the instructors could accept the lunch and refreshments offered to other attendees.

Service as Uncompensated Instructors

Your first question is whether the Ethics Law prohibits the Office from asking the appointed investment experts to serve as uncompensated instructors for CPIM. Because they are appointed to offices of a public agency, the members of retirement system boards and the Oversight Commission are all public officials subject to the restrictions in the Ethics Law. R.C. 102.01(B) and (C). The Ethics Law generally prohibits any public official or employee from using his or her public position to secure, and from soliciting or accepting, any *benefits* for himself or for other persons with whom he or she has a close family, business, or economic relationship. R.C. 102.03(D) and (E).

There is nothing in the law that prohibits the Office from inviting these officials to participate as instructors in the CPIM program, or prohibits the officials from participating as instructors, as long as they are not compensated for their services. However, it must be clear that the individual is participating in his or her individual capacity, as a result of professional expertise, rather than as a member of the board or commission he or she serves.

Accepting Lunches and Refreshments

Your second question raises issues under R.C. 102.03(D), (E), and (F), 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.
- (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.

“Anything of value” is defined to include money and other things of value. R.C. 102.01(G), 1.03. Meals, gifts, and entertainment ideas all fall within the definition of anything of value. Ohio Ethics Commission Advisory Opinion No. 2001-03.

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 or her 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 or her 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.

The Office of the Treasurer is not doing or seeking to do business with or regulated by the five retirement system boards or the Oversight Commission. However, because the Treasurer does have the authority to appoint members to each of these boards, the Commission concludes that the Office is interested in matters before those boards.

Some things of value, because of their nature, could have a “substantial” influence on an official in the performance of his or her 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.

You have not given the specific value of the meals and refreshments provided to instructors at CPIM seminars or the number of seminars at which the instructors might be asked to participate. However, the value of a meal and refreshments ordinarily provided at a seminar sponsored by a public agency are not substantial for purposes of R.C. 102.03(D) and (E). Further, because the meals and refreshments are offered to all attendees at these seminars, it is unlikely they could have a substantial and improper influence on instructors who accept them.

Therefore, R.C. 102.03(D) and (E) do not prohibit any investment expert member of the retirement system boards and Oversight Commission from soliciting or accepting lunches and refreshments of a routine character when participating as instructors in these seminars. R.C. 102.03(F) does not prohibit the Office from promising or giving a person who is an investment expert member of a retirement system board or Oversight Commission lunches and refreshments of a routine character at CPIM seminars.

Retirement System Board Members—R.C. 102.03(H)(2)

There is, however, one specific restriction that applies to members of retirement system boards, which was enacted in 2004 as part of the pension system reform legislation (Sub.S.B. No. 133), and provides:

No person who is a member of the board of a state retirement system, a state retirement system investment officer, or an employee of a state retirement system whose position involves substantial and material exercise of discretion in the investment of retirement system funds shall solicit or accept, and no person shall give to that board member, officer, or employee, payment of actual travel expenses, including expenses incurred with the travel for lodging, meals, food, and beverages.

The purpose of R.C. 102.03(H)(2) was to narrowly restrict the permissible sources of travel expenses for members of retirement system boards. The law allows only the retirement system to pay the necessary expenses for its board members when engaged in travel related, in any way, to their service on the board. However, within the specific facts you have presented, as long as the retirement system board member is participating as an instructor in the CPIM seminar in his or her individual capacity, as a result of his or her professional expertise, rather than as a member of the retirement system board, R.C. 102.03(H)(2) does not prohibit the instructor from accepting meals, food, or beverages of a routine character offered in connection with the seminar.

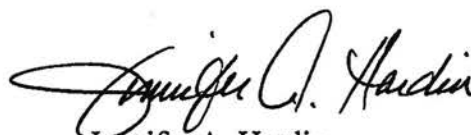
Conclusion

As explained more fully above, the Ethics Law does not prohibit the Office of the Treasurer from asking an investment expert who serves as a member of the state retirement systems or the Bureau of Workers' Compensation Oversight Commission, from acting as an uncompensated instructor at an educational seminar conducted by the Treasurer's Office as long as the expert is participating in his or her individual capacity and not as a member of the public board or commission he or she serves. The Law does not prohibit the Office from giving, or prohibit an investment expert from accepting, the lunch and refreshments offered to all attendees at the seminar.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on June 29, 2006. The Commission commends the Treasurer's Office 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,



Jennifer A. Hardin
Chief Advisory Attorney