

OHIO ETHICS COMMISSION

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David E. Freel, *Executive Director*

November 1, 2006

Informal Opinion 2006-INF-1101-1

Albert S. Neubert
Senior Vice President, Business Development
Information Management Network

Dear Mr. Neubert:

On July 14, 2006, the Ohio Ethics Commission received your letter requesting an advisory opinion. In your letter, you explained that Information Management Network (IMN) proposes to hold a conference in Columbus in January 2007. The conference is titled The Ohio Forum on Public Retirement (OForum) and will focus on issues related to public retirement in the state of Ohio. You state that you anticipate staff, board members, and elected officials from the five state retirement systems, Ohio General Assembly, and Ohio Retirement Study Council will attend the OForum, and that some of these individuals may be involved in the delivery of material as panelists and presenters.

You have asked for an advisory opinion from the Commission to ensure that the OForum meets all requirements of the Ethics Law. Your specific question involves a ninety-percent discount (totaling \$1775) off the cost of registration for the conference and sponsorship of the event by companies that are doing or seeking to do business with, regulated by, or interested in matters before the retirement systems.

Brief Answer

As explained more fully below, R.C. 102.03(F) prohibits IMN from promising or giving Ohio retirement system officials and employees a ninety percent discount, totaling \$1775, off the cost of an educational conference. Further, R.C. 102.03(E) prohibits any retirement system official or employee from accepting a substantial discount of that nature. IMN must charge, and the retirement system official or employee must pay, an amount that reasonably reflects the actual value of the conference, including the educational benefit received.

The Ethics Law does not prohibit companies that are doing or seeking to do business with, regulated by, or interested in matters before, a retirement system from financially supporting the conference through sponsorships, even though sponsorships will help defray the cost of the conference, as long as it is a genuine educational or informational conference and the benefits of the sponsorships are of an ordinary character, available to any person attending the conference, and provided at the conference site.

Facts

You have explained that the OForum will be a one and one-half day conference and that you expect 150 to 200 people to attend. The OForum will provide a light breakfast of coffee, baked goods or fruit on both days. The OForum will provide lunch, dinner, and a reception on the first day, all of which will be selected from the hotel's standard conference menu.

The cost of registration for the OForum will be \$175 for public officials and employees and \$1950 for all others. You have also explained that some individuals or companies will act as sponsors for the OForum. In an e-mail to the Commission, you explained the sponsorship levels:

Level	Sponsor Receives	Cost
Lead	Three speaking sessions Co-chair the event Ten firm passes and "ten+" client passes Priority exhibit space Firm logo and description in brochure and Web site (300 words) Advance attendee list three weeks before event	\$50,000
Platinum	Two speaking sessions Six firm passes and six client passes Priority exhibit space Firm logo and description in brochure and Web site (200 words) Advance attendee list two weeks before event	\$25,000
Gold	One speaking session Four firm passes and four client passes Exhibit space Firm logo and description in brochure and Web site (150 words) Advance attendee list one week before event	\$15,000
Silver	One speaking session on a panel at the event Two firm passes and two client passes Exhibit space Firm logo and description in brochure and website (100 words)	\$10,000
Exhibitor	Two firm passes and two client passes Exhibit space Firm logo and description in brochure and website (75 words)	\$7,500

The sponsorship document you provided to the Commission states: “We ask that the content for all presentations not be sales driven but more informative talking about trends, analysis, etc.” At this time, the registration materials show that eight companies have become sponsors—one lead, one platinum, and one gold sponsor, four silver sponsors, and one exhibitor—which would appear to result in a total sponsorship commitment of \$137,500. However, in a subsequent letter, you explained that IMN routinely discounts the costs of sponsorships by as much as twenty-five to fifty percent, and that sponsors of the OForum had paid discounted sponsorship fees, which would result in a lower sponsorship commitment.

In your initial letter, you estimated that the cost of marketing the event would be \$45,000 (handled by the marketing division of IMN) and the cost of production and presentation of the event would be \$40,000. However, in a subsequent e-mail, you stated that IMN’s average conference cost is around \$150,000, which includes all of the overhead allocations devoted to each program.

The question before the Commission is whether the officials and employees of a public retirement systems are prohibited from accepting a ninety-percent discount in the cost of a conference where the bulk of the conference cost is borne, through high registration fees and substantial sponsorships, by companies that are doing or seeking to do business with the systems.

Introductory Comments

At the outset, the Commission wishes to note that this question was first raised in July when the OForum was scheduled for November. The OForum was rescheduled to January by IMN for reasons that do not involve IMN’s request to the Commission. The IMN informational materials for the OForum also state that the Commission “is working closely” with IMN to “ensure that the OForum meets the state’s strict standards for quality education for its plan’s [sic] fiduciaries.” The Commission recognizes IMN’s desire to meet the law’s requirements. However, the Commission has been asked to answer only the question above. The Ethics Commission has not been asked to review, and has not endorsed in any fashion, the educational content of the OForum.¹

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

Your question raises issues under R.C. 102.03 (E) and (F), which provide:

- (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.

¹ The Commission notes that each of the state retirement systems has adopted an Ethics Policy that may, in addition to the Ethics Law, govern the issue you raise. For more guidance on the Ethics Policies, please contact the Chief Counsel at each retirement system.

- (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 "person," as used in R.C. 102.03(F), is defined to include any individual, corporation, partnership, association, or other similar entity. See R.C. 1.59. IMN is a "person" for purposes of R.C. 102.03(F). Board members and employees of the state agencies you described fall within the definition of "public official or employee," and are subject to the restrictions in R.C. 102.03(E).²

"Anything of value" is defined to include money, goods and chattels, and every other thing of value. R.C. 102.01(G); 1.03. A discount falls within the definition of "anything of value." Ohio Ethics Commission Advisory Opinions No. 92-015 and 98-001. The discount of more than ninety percent on the cost of a seminar would be within the definition of anything of value.

In Advisory Opinion No. 2001-08, the Commission considered the question of discounts. In that opinion, the Commission stated: "R.C. 102.03(F) would prohibit [a private party] from promising or giving discounts of a substantial value to specific public officials and employees who perform duties in their public employment related to [its] business." See also Adv. Op. No. 92-015 (Significant discounts provided by a merchant to members of the police force in the same city are prohibited by R.C. 102.03(F)). However, the Commission also considered discounts offered to a large class of public officials and employees, for the purpose of increasing the potential pool of consumers for a product or service, where the discounts are identical for all of the officials and employees, and those individuals who decide matters affecting the company do not receive selective, differential, or disproportionate benefits. The Commission concluded that, in those cases:

[T]he promise or offer of the proposed discounts could not manifest a substantial and improper influence upon the public officials and employees with respect to their duties. Therefore, R.C. 102.03(F) does not prohibit [the] company from promising or giving a uniform discount on its services to a large class of public officials and employees, even though some members of the class serve public agencies that do business with, or regulate [the] company. In addition, R.C. 102.03(E) does not prohibit any public official or employee—including a public official or employee who performs official duties that affect decisions involving the financial interests of [the] company—from accepting such a discount as long as the official or employee does not use his or her authority over [the] company in any way to secure the discount.

² These provisions are also applicable to members and employees of the Ohio General Assembly. However, the Ohio Ethics Commission is not the "appropriate ethics commission" to answer questions about how the laws apply to legislators and legislative employees. For guidance on that issue, you should contact the Joint Legislative Ethics Commission/Office of the Legislative Inspector General.

In the case you have described, the discounted registration fee is offered only to public officials and employees connected with the Ohio's public retirement systems and the Retirement Study Commission. This is not a "large class" of officials and employees who have been invited to the event without regard for the specific public service they perform. These public servants are directly involved in the administration and investment of public retirement assets. Therefore, the \$1775 discount is a substantial thing of value that would accrue to any public official or employee who attended the conference at the discounted rate and is of such a character as to have a *substantial* influence on the official or employee.³

However, it must still be determined whether the source of the discount to retirement system officials and employees would be of such a character as to have an *improper* influence on them with respect to the performance of their duties. In this instance, the discount is being offered by IMN, a private company. With the exception of offering these conferences, it does not appear from the materials submitted in your request that IMN itself is doing business with, regulated by, or interested in matters before the retirement systems.

While IMN may not be doing business with or regulated by the pension systems, the sponsors whose economic contributions are being used to underwrite the cost of IMN's conference *are* doing or seeking to do business with the retirement systems. For example, one of the primary sponsors is a law firm that is currently representing some of the retirement systems in an ongoing matter. Other sponsors are companies that manage investments for investors such as pension plans.

In communications with Commission staff, you acknowledged that IMN is offering this conference with the intention that it will be a profit-making venture. Without the potential for a significant number of retirement system officials to attend a conference of the kind you have described, it is likely that these companies would be unwilling to pay for sponsorships at the conference. Sponsors receive access to the OForum attendees in a variety of ways, among them the ability to participate as speakers, have numerous firm employees in attendance, and receive a list of the attendees in advance of the event.

In order to encourage a large number of retirement system officials and employees to attend the OForum, and therefore encourage companies who desire access to retirement system officials and employees to attend the conference, IMN proposes to offer a significant discount to retirement system attendees. Because the cost of the discount is borne by the sponsors of the conference, who are otherwise improper sources of things of value provided directly to these public officials and employees, R.C. 102.03(F) prohibits IMN from offering the discount to these officials and employees. R.C. 102.03(E) also prohibits the officials and employees of retirement systems from accepting the offered discount. Adv. Op. No. 92-019.

³ The Commission has concluded that the benefit of a reduced rate or free admission to an educational session goes to the individual public official or employee who attends the event, even if the agency he or she serves also benefits.

The Ethics Law does not prohibit retirement system officials and employees from attending bona fide educational sessions of the kind you describe. However, it must be clear that the event is of a genuine educational character, without personal entertainment paid for by others, and is not merely an opportunity for the vendor community to interact with officials and employees of pension systems. In fact, Ohio Law requires orientation and continuing education, including ethics education, for board members and the Commission wholeheartedly supports that requirement.⁴

Further, the Ethics Law does not preclude a *minimal* discount for an educational event offered to a government employee. However, the discount of the kind you have described—ninety percent (\$1775) off the ordinary cost of the conference—far exceeds any minimal standard. The cost charged to any government attendee at a conference must reasonably reflect the actual value of the educational and other benefits he or she is receiving. If the value of the benefits provided at the conference is \$1950, IMN must charge any attendee, including any retirement system official or employee, that amount or a minimally (five to ten percent) discounted amount.

Sponsorships

With respect to the legality of the sponsorships themselves, the Commission considered a similar situation in Advisory Opinion No. 2002-02. In that opinion, the Commission was asked whether a private corporation could underwrite the cost of a meal, reception, or open house at a conference of public officials and employees. The corporation was doing or seeking to do business with, interested in matters before, or regulated by at least some of the public agencies represented at the conference. The Commission stated:

If the meal, reception, or open house is of an ordinary, routine character, and is provided to all officials and employees at the conference, and not limited to those who work with agencies that do business with the sponsoring party or those from whom the sponsor is specifically soliciting business, the meal, reception, or open house would not have a substantial and improper influence upon the public officials and employees who accept it. Therefore, R.C. 102.03(F) of the Revised Code does not prohibit a person from providing the cost of a meal, reception, or open house of an ordinary, routine character at a conference of public officials and employees, even though the total cost of the event may be substantial for the person.

⁴ R.C. 171.50 requires that the retirement systems prepare orientation and continuing education programs. All new board members are required to attend an orientation program and all sitting members are required to attend continuing education sessions twice a year. R.C. 145.041 (Public Employees Retirement System), 742.031 (Police and Fire Pension Fund), 3307.051 (State Teachers Retirement System), 3309.051 (School Employees Retirement System), and 5505.064 (Ohio Highway Patrol Retirement System).

However, it must be clear that the meal, reception, or open house is open to all of the officials and employees attending the conference, regardless of whether the public agencies they serve have a business, regulatory, or other relationship with the sponsor. The Commission understands that there may be some events that are attended primarily by officials and employees who perform specific job functions, sponsored by persons who do business with those officials and employees. The Ethics Law and related statutes do not prohibit such events, so long as all such officials and employees are invited. However, the conference must be of a genuine educational or informational character.

Adv. Op. No. 2002-02. The Commission further concluded that R.C. 102.03(E) does not prohibit the officials or employees attending the conference from accepting meals, or attending receptions or open houses at the event, as long as they meet the parameters discussed above. It is especially important that the item or event is offered "at" the conference. In other words, the meal or reception cannot be at a restaurant or other site. However, R.C. 102.03(E) would prohibit an official or employee from accepting, and R.C. 102.03(F) would prohibit any person from promising or giving a public official or employee, any meal or entertainment of a lavish nature, even if the item is offered to all officials and employees attending the conference. Id.

The same conclusions would apply in this instance as long as the event is of a genuine educational or informational character. If, in that case, the sponsorships paid to the conference organizer are used to cover costs associated directly with the conference, would benefit all attendees at the conference in the same way, and are not used to provide meals or entertainment of a substantial character to attendees (such as off-site expensive meals or tickets to off-site events such as plays and golf outings), the Ethics Law does not prohibit them. However, as stated above, it must be clear that officials or employees attending the conference are paying registration fees of an amount that is reasonably commensurate with the actual benefit, including any educational benefit, received from the event.

Conclusion

As explained more fully above, R.C. 102.03(F) prohibits IMN from promising or giving Ohio retirement system officials and employees a ninety percent discount, totaling \$1775, off the cost of an educational conference. Further, R.C. 102.03(E) prohibits any retirement system official or employee from accepting a substantial discount of that nature. IMN must charge, and the retirement system official or employee must pay, an amount that reasonably reflects the actual value of the conference, including the educational benefit received.

The Ethics Law does not prohibit companies that are doing or seeking to do business with, regulated by, or interested in matters before, a retirement system from financially supporting the conference through sponsorships, even though sponsorships will help defray the cost of the conference, as long as it is a genuine educational or informational conference and the benefits of the sponsorships are of an ordinary character, available to any person attending the conference, and provided at the conference site.

Albert A. Neubert
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The Ohio Ethics Commission approved this informal advisory opinion at its meeting on October 27, 2006, and determined that a copy of the opinion would be provided to the Director of each state retirement system. 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,

A handwritten signature in black ink, appearing to read "Jennifer A. Hardin", written in a cursive style.

Jennifer A. Hardin
Chief Advisory Attorney