

OHIO ETHICS COMMISSION

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David E. Freel, *Executive Director*

August 30, 2007

Informal Opinion 2007-INF-0830-1

Thomas A. Plunkett
Fire Chief
Reminderville Fire Department

Dear Chief Plunkett:

On May 14, 2007, the Ohio Ethics Commission received your request for an advisory opinion. In your letter, you asked if the Ethics Law and related statutes prohibit you from accepting a prize valued at \$10,000 that you won in the "Firedog Across America" Contest, a nationwide contest sponsored by Circuit City Stores, Inc. (Circuit City) to identify and reward firehouses for exceptional community service.

You explained that you entered the contest by writing an essay describing how the Reminderville Village Fire Department (Department) has contributed to the community. You submitted your entry electronically, on your personal computer, and did not represent or identify yourself in any way as an employee of the Department on your application. Of the more than 5,000 firehouses nominated, your essay was selected as one of the 10 contest finalists. Each firehouse finalist won \$20,000 for the purchase of fire and rescue equipment, a portion of a shared prize pool generated by an online voting competition, and the chance to win the grand prize of an additional \$100,000. The Department's total prize package was \$24,725. In addition, each corresponding essay author, including you, was awarded electronics and installation services valued at \$10,000.

You attached copies of various documents you received from Circuit City to your request, including a letter to you from the contest administrator, your signed contest affidavit and release, your completed substitute W-9 form, the official rules of the contest, and your essay submission. You also attached a copy of an opinion that you received from the Village Law Director stating that there does not appear to be any ethical violation for entering or winning the contest.

Brief Answer

As explained more fully below, the Ethics Law and related statutes do not prohibit you from accepting a prize you won from Circuit City in a national essay contest.

Supplemental Compensation

R.C. 2921.43(A)(1) prohibits a public servant from soliciting or accepting, and any "person" from promising or giving to a public servant, any "compensation," other than as allowed in some narrow exceptions¹, or other provision of law, for: (1) performing a duty, act, or service required in his official capacity as a public servant; (2) the general performance of his public duties; or (3) as a supplement to his public compensation. See Ohio Ethics Commission Advisory Opinions No. 89-012 (R.C. 2921.43(A)(1) prohibits payment for legal services required to be performed by a law director), 89-013 (R.C. 2921.43(A)(1) prohibits travel, meal, and lodging expenses for travel on state business), and 91-010 (R.C. 2921.43(A)(1) prohibits "frequent flyer" benefits earned through travel on state business). This provision is intended to assure the public that those who serve them are not obliged to someone else beyond the public.

The term "public servant" is defined to include any person who is appointed to an office of, or is an employee of, any department, division, institution or other instrumentality of the state or any other governmental entity. A village fire chief is a "public servant" subject to R.C. 2921.43. R.C. 2921.01(A) and (B). The term "person" is defined to include any individual, corporation, partnership, association, or other similar entity. See R.C. 1.59.

The word "compensation" is not defined for purposes of R.C. 2921.43. 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. See also City of Mentor v. Giordano, 9 Ohio St.2d 140, 144 (1967) and Adv. Op. No. 92-014. "Compensation" is defined as "payment for services: esp., wages or remuneration." See Webster's New World Dictionary 289 (2nd College Ed. 1972).

R.C. 2921.43(A)(1) prohibits you from soliciting or accepting any payment from any person, company, partnership, or other organization for performing any of your duties for the village. For example, you would be prohibited from receiving payment from a village resident for responding to the resident's emergency call.

According to the information you provided, the contest you won was a national contest open to any eligible person. You entered the contest on your own time. Although the purpose of the contest was to reward firehouses for exceptional public service, the prize that you and the

¹ The exceptions in R.C. 102.03(G) through (I) concern campaign contributions, honoraria or fees for making a personal appearance or speech, and travel, meals, and lodging or expenses incurred in connection with a personal appearance or speech or conferences, seminars, and similar events related to official duties. These exceptions do not apply to the question that you have presented.

other essay authors won was based on your essay writing skills. The prize was not provided as payment for the performance of your job duties as the Village Fire Chief or as a supplement to your public compensation. Therefore, R.C. 2921.43(A)(1) does not prohibit you from accepting the prize, but you must also comply with the conflict of interest prohibitions explained below.

Conflict of Interest Prohibitions

Your attention is directed to R.C. 102.03(E) which prohibits a public official or employee from accepting anything of value that is of such a character as to manifest a substantial and improper influence upon a public official or employee with respect to that person's duties.

A village employee, including a village fire chief, is a "public official or employee" subject to the prohibitions of R.C. 102.03(E).

The term "anything of value" is defined to include money, goods, interests in realty, and every other thing of value. R.C. 102.01(G) and 1.03. The Ethics Commission has held that gifts and gratuities constitute things of value. Adv. Ops. No. 86-003, 91-010, and 92-015. An electronics and installation services prize won in a contest is a thing of value.

The Ethics Commission has stated that a thing of value is of such a character as to manifest a substantial influence on a public official or employee if it is of a substantial nature or value. Adv. Ops. No. 90-001, 92-014, and 92-015. A prize package valued at \$10,000 raises the question of whether it is of such a character as to manifest a substantial and improper influence on the public official or employee.

The application of R.C. 102.03(E) is dependent upon the facts and circumstances of each individual situation. Adv. Ops. No. 86-011 and 87-008. The contest you won was sponsored by fire dog, which is owned and operated by Circuit City. You explained that you saw the advertisement for the contest in a Circuit City store located in a jurisdiction where you have no enforcement or regulatory authority. You stated that the judges who selected the finalist are located in another state and that you have never met or communicated with the other essay authors. As long as the contest sponsor, Circuit City, is not doing or seeking to do business with, interested in matters before, or regulated by the village, R.C. 102.03(E) does not prohibit you from accepting the prize. Because the village does not have a relationship with Circuit City that will have an improper influence upon you with respect to your public duties, the prize is not of such a character as to manifest a substantial and improper influence on you with respect to your duties.

Conclusion

As explained more fully above, the Ethics Law and related statutes do not prohibit you from accepting a prize you won from Circuit City in a national essay contest.

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The Ohio Ethics Commission approved this informal advisory opinion at its meeting on August 23, 2007. 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 that reads "Karen R. King". The signature is written in a cursive style with a large, stylized "K" and "R".

Karen R. King
Staff Advisory Attorney