

OHIO ETHICS COMMISSION

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David E. Freel, *Executive Director*

September 14, 2007

Informal Opinion 2007-INF-0914

Mary C. Mertz
Squire, Sanders & Dempsey L.L.P.

Dear Ms. Mertz:

On August 15, 2007, the Commission received your letter requesting guidance on behalf of your client, the Columbus Regional Airport Authority (CRAA). In your letter, you explained that CRAA is hosting an air show at Rickenbacker Airport at the end of this month. CRAA would like to provide four tickets to the air show to state and local public officials and employees, including officials and employees of agencies that either provide funds to or regulate CRAA. The total value of the tickets and meals provided to each public official or employee would be over \$250.00.

The Commission considered the question in your letter at its meeting on August 23, 2007. The sections of the Ethics Law that are most directly applicable to your question are 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.

Mary C. Mertz
September 14, 2007
Page 2

R.C. 102.03(F) applies to CRAA and the other sponsors of the air show. R.C. 102.03(D) and (E) apply to officials or employees of any public agency in Ohio, including the officials to whom CRAA wishes to provide air show tickets.

In order to determine whether the prohibition of R.C. 102.03 applies, it is necessary to examine both the nature and source of the thing of value. Ohio Ethics Commission Advisory Opinion No. 86-011. A thing of value is of a substantial and improper character if it could impair a public official's or employee's objectivity and independence of judgment with respect to his or her public duties. Adv. Ops. No. 91-010 and 95-001.

The Commission has concluded that 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 and 2001-03. In a telephone conversation with staff, you indicated that CRAA wants to provide each public official and employee with four \$55 passes to attend the event and food and beverages valued at \$24 per person. The public officials and employees will also receive "chalet" seating but you were unable to ascertain the value of the seating. Complimentary passes, preferred seating, and meals totaling over \$250 a person is a thing of substantial value.

With regard to the source of the thing of value, the Ethics Law establishes that anything of value provided to a public official or employee from a party that is interested in matters before, regulated by, or doing or seeking to do business with the agency he or she serves will be of such a character as to manifest an improper influence on the official or employee. Adv. Ops. No. 84-010 and 86-011.

You explained that CRAA would like to offer passes to "a number of state and local officials and public employees." Although it is not clear which state and local agencies these officials and employees serve, your letter does reference the Ohio Department of Development (ODOD), Franklin County, and the City of Columbus. Various public agencies may have business or regulatory relationships with CRAA. CRAA is characterized as a joint venture of the Franklin County and the City of Columbus. The members of the CRAA's Board of Directors are appointed by the Franklin County Commissioners and the Mayor of the City of Columbus with the consent of City Council. The authority operates three central Ohio airports: Port Columbus, Rickenbacker, and Bolton Field. CRAA receives funding from the County and ODOD. You have indicated that CRAA receives limited annual funding from Franklin County as a result of an agreement to operate Rickenbacker and receives grants from ODOD for capital projects. CRAA is also subject to local regulations such as building standards and road requirements.

The Commission has examined situations involving similar regulatory and financial connections between a governmental entity and a corporation and found that the corporation was an improper source of gifts. Adv. Op. No. 95-001. At its August meeting, the Commission concluded that CRAA's connections with ODOD, Franklin County, and the City of Columbus, makes CRAA is an "improper" source of anything of substantial value provided to officials and

Mary C. Mertz
September 14, 2007
Page 3

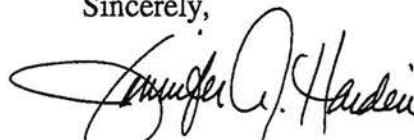
employees of these entities. After discussing the issues, the Commission concluded that, except as discussed below, R.C. 102.03(F) would prohibit CRAA from providing more than \$250.00 of tickets and other benefits you described to public officials and employees who serve with agencies that have regulatory or financial connections with CRAA.¹ Further, R.C. 102.03(D) and (E) would prohibit the officials and employees of those agencies from accepting the tickets and other benefits.

However, the Commission has previously concluded that R.C. 102.03(F) does not prohibit an otherwise improper source from providing a public official or employee the opportunity to attend an event in a ceremonial or honorary capacity. The Commission suggested that, in this instance, CRAA send a letter inviting the officials to attend or be co-hosts of the event in a ceremonial or honorary capacity, and explain the functions that the authority intends the officials will perform. In order to perform a ceremonial or honorary function at the event, the officials will not be prohibited from attending the event without paying an admission fee.

R.C. 102.03(D) and (E) does not prohibit the officials or employees from accepting the invitation, on an honorary or ceremonial basis as co-hosts of the event. However, if any public official or employee would like to have family members accompany them to the air show, the official or employee would be required to pay fair market value for their family members' admission to the event and any other items of value provided.

This staff advisory opinion represents the views of the undersigned, based on the facts presented and the discussion of the Commission at its meeting on August 23, 2007. 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 other questions or need additional information, please contact me again.

Sincerely,



Jennifer A. Hardin
Chief Advisory Attorney

¹Supplemental compensation restrictions may also be implicated. R.C. 2921.43(A)(1) 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 provided in exchange for the performance of the public servant's public duties. See Adv. Op. No. 90-001.