

OHIO ETHICS COMMISSION

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David E. Freel, *Executive Director*

April 29, 2008

Informal Opinion 2008-INF-0429

Stacy Frank, President
The Kenston Foundation

Dear Ms. Frank:

On October 1, 2007, the Ohio Ethics Commission received your request for an advisory opinion. In your letter, you explained that you are the President of the Kenston Foundation (Foundation), a 501(c)(3) corporation whose mission is to act in support of educational excellence in the Kenston Local School District (District). The Foundation raises money to provide scholarships to District graduates and grants to District professional staff.

You explained that the Foundation would like to hold a raffle fundraiser called "Send a Staff Member Packing." Any member of the community would be able to buy a \$5 raffle ticket. The ticket-holder would place his or her name, and the name of any District employee, on the ticket. The winning ticket would be drawn at random. The winning ticket-holder would receive an overnight stay at an Ohio water park, provided by the Foundation. The District employee named on the drawn ticket would receive a three-night stay at a private home in Chautauqua, New York, donated by a local family/business. District employees who are named on the tickets would be notified by e-mail of all tickets that have been purchased in their honor.

The ability of the Foundation to hold a raffle to support the District is not at issue. However, you have asked if the Ethics Law and related statutes would prohibit a District employee from accepting the raffle prize. In addition, this opinion will consider whether the Foundation or the donor is prohibited from giving the trip to a District employee.

Brief Answer

As explained more fully below, R.C. 2921.43(A)(1) prohibits any public servant, including any person serving as a District official or employee from accepting a trip won in a raffle where the purpose of the prize is to provide a supplement to the winner's public compensation. R.C. 2921.43(A)(1) also prohibits the Foundation from giving the trip to a District official or employee.

Supplemental Compensation

The supplemental compensation law, R.C. 2921.43(A), applies to any “public servant,” which includes any school district administrator, official, or employee, including an athletic coach, administrator, supervisor, management-level employee, or teacher, regardless of his or her duties and responsibilities. R.C. 2921.01(A) and (B); Ohio Ethics Commission Advisory Opinions No. 93-017 and 2001-04. R.C. 2921.43(A) provides that no public servant shall knowingly solicit or accept and no person shall promise or give a public servant either:

- (1) Any compensation, other than as allowed by . . . 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;¹
- (2) Additional or greater fees or costs than are allowed by law to perform the public servant’s official duties.

The word “compensation” is not defined in or for R.C. 2921.43. The Ethics Commission has concluded that compensation is “payment for services: esp., wages or remuneration.” In other words, any thing of value that is given for services can be compensation, whether it is in the form of cash, tangible goods or chattels, or other financial gains or benefits that accrue to the public servant. The services performed by the public servant may be provided for the specific benefit of the individual offering the compensation or for the general benefit of the public agency and the citizens served by the agency.

In Advisory Opinion No. 2008-01, the Commission fully explained the supplemental compensation law as it applies to school district employees. I have attached a copy of that opinion for your information. In summary, the Commission explained that the General Assembly intended to protect the public by ensuring that a public servant would serve only the taxpayers, and the performance of his or her job duties would not be influenced by the public servant’s obligation to any *other* source of compensation. Adv. Op. No. 2008-01. The purpose for which a person offers compensation may be to reward the efforts of a public servant that are directed toward the outcomes favored by the donor. However, the purpose may also be a more benign attempt to recognize exemplary service of the public servant on behalf of the public. Regardless of the purpose, such compensation is prohibited by R.C. 2921.43(A).

For example, the Commission has concluded that a significant discount on major appliances and other expensive home goods, offered by a city retailer to members of the city police department, was prohibited “supplemental compensation” because the retailer’s stated purpose was to reward officers for the general performance of their duties and to make a supplement to their public

¹ There are three specific exceptions to this provision, set forth in R.C. 102.03(G), (H), and (I). The exceptions apply to campaign contributions, honoraria, and travel expenses, and are not relevant to your question.

compensation. Adv. Op. No. 92-015. The Commission concluded that R.C. 2921.43(A) prohibited both the offer and the acceptance of the discount.

Application to Facts Presented

In your letter, you explained that the Foundation acts in support of educational excellence in the District and raises money to provide scholarships to District graduates and grants to District professional staff. "Send a Staff Member Packing" is a fundraising raffle where a ticket purchaser can win a prize for the purchaser. This aspect of the raffle is not within the Commission's authority. However, each purchaser can name any District employee on the tickets he or she purchases. The employee whose name is on the winning ticket will also win a trip. It is this aspect of the raffle that raises issues under the Ethics Law and related statutes.

Because a ticket holder can name *any* District employee or official on the ticket, and the raffle drawing is random, the raffle prize is not intended to be given to any District staff member "to perform the public servant's official duties" or "to perform any other act or service in the public servant's public capacity." However, the prize of the New York trip is specifically reserved for a District staff member. In fact, as you noted in your letter, all of the District officials and employees named on the tickets will receive notice of any tickets that have been purchased in their honor. Also, as the name of the event suggests, part of the event's purpose is to allow the community to recognize or honor a District official or employee for the performance of his or her job duties. This would not be the case if the name and scope of the event were changed such that the prize could be awarded, for example, to any member of the community named on the ticket, regardless of his or her public service.

In the situation that you described, a District official or employee who receives a free three-night stay in New York, as a result of a raffle ticket purchased by a member of the community in recognition of the employee's or official's service with the District, would be receiving "compensation," in the form of the trip, "for the general performance" of his or her public employment and as a "supplement" to his or her public compensation. See Adv. Op. No. 92-015. Therefore, R.C. 2921.43(A)(1) prohibits a District official or employee from accepting a prize from the Foundation. Further, while the Commission appreciates the Foundation's mission to "act in support of educational excellence," R.C. 2921.43(A)(1) prohibits the Foundation, or any other person, from promising or giving, such a prize to a District official or employee.

Accepting or Giving Anything of Value—R.C. 102.03(E) and (F)

Because R.C. 2921.43(A)(1) prohibits any school district employee, regardless of job duties, from accepting the raffle prize in the situation you have described, it is unnecessary for the Commission to devote significant attention to the prohibitions in R.C. 102.03(E) and (F). However, it should be noted that R.C. 102.03(E) and (F) prohibit any public official or employee from soliciting or accepting, and any person from promising or giving to a public official or employee, anything of value that is of such a character as to manifest a substantial and improper influence on the official or employee in the performance of public duties. R.C. 102.03(E)

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applies to all District employees, except teachers who do not perform administrative or supervisory duties. R.C. 102.01(B) and (C).

The Commission has explained that a thing of value can manifest a substantial and improper influence upon a public official or employee with respect to his or her duties if it could impair the official's or employee's objectivity and independence of judgment in the performance of his or her statutorily prescribed duties. Adv. Op. No. 90-012. The application of R.C. 102.03(E) and (F) depends on the facts and circumstances, including the nature and source of the thing of value. Adv. Op. No. 97-002. The Commission has explained that a thing of substantial value offered to a public official or employee by a source that is doing or seeking to business with, regulated by, or interested in matters before the public agency he or she serves, could impair the public servant's objectivity and independence of judgment. Adv. Op. No. 2001-03.

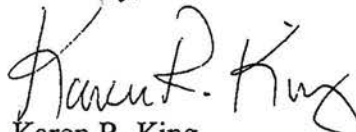
The prize is a thing of substantial value. Adv. Op. No. 96-003 (concluding that lodging in a private residence is a thing of value). The Foundation, which is the primary source of the trip, is a party interested in matters before the district. Therefore, R.C. 102.03(E) prohibits a District employee (excluding most teachers) whose name appears on the winning raffle ticket from accepting the prize you described because it is provided by a prohibited source. Further, R.C. 102.03(F) prohibits the Foundation from giving the prize to the District employee.

Conclusion

As explained more fully above, R.C. 2921.43(A)(1) prohibits any public servant, including any person serving as a District official or employee from accepting a trip won in a raffle where the purpose of the prize is to provide a supplement to the winner's public compensation. R.C. 2921.43(A)(1) also prohibits the Foundation from giving the trip to a District official or employee.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on April 11, 2008. 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
Advisory Staff Attorney

Enclosure: Advisory Opinion No. 2008-01