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Merom Brachman
Betty Davis
Steven Dettelbach
Shirley Mays



OHIO ETHICS COMMISSION
8 East Long Street, 10th Floor
Columbus, Ohio 43215
Telephone: (614) 466-7090
Fax: (614) 466-8368

www.ethics.ohio.gov

David E. Freel,
Executive Director

October 2, 2008

Informal Opinion 2008-INF-1002-1

Pamela L. Bennett
President, Friends of the Ohio Governor's
Residence and Heritage Garden

Dear Ms. Bennett:

On June 25, 2008, the Ohio Ethics Commission received your request for an advisory opinion. In your letter, you explained that you are the President of the Friends of the Ohio Governor's Residence & Heritage Garden (Friends of the Residence). The Friends of the Residence is a 501(c)(3) organization dedicated to preserving the Ohio Governor's residence and heritage garden through volunteer work and philanthropic donations. You explained that First Lady Frances Strickland serves as Chair, and Alta Beasley, wife of the Director of the Ohio Department of Transportation (ODOT), serves as the Vice-President, of the Friends of the Residence's Board of Directors.

You explained that the Friends of the Residence will be launching a capital campaign to build an education center at the Governor's residence. The campaign is directed toward raising approximately three million dollars in private support for the construction of the center. Under a Memorandum of Understanding established through the Controlling Board, the Friends of the Residence have agreed that the funds raised will be deposited with the Department of Administrative Services (DAS), which will also act as contract manager for the construction of the building. The center will be owned by DAS.

You explained that the First Lady serves as an honorary chair of the campaign; Ms. Beasley serves as a co-chair of the campaign. Both will be "participating directly in [the] fundraising activities for this capital campaign." You have asked for guidance from the Commission about the involvement of the First Lady and Ms. Beasley in these fundraising efforts.¹

¹ In a telephone call from the Governor's Staff, the Commission staff has been informed that neither the First Lady nor Ms. Beasley will be engaged in active fundraising, but will, rather, provide information about the proposed center. While their roles may amount to a more limited fundraising role, the Commission believes that, as honorary chair and co-chair of the campaign providing information about the project, both will be involved in the fundraising effort.

In order to answer your question, the Commission must consider the extent to which the Ethics Law applies to the First Lady and the wife of a cabinet member. The Ethics Law and related statutes (Chapter 102. and R.C. 2921.42 and 2921.43) apply to public officials, public employees, and public servants. These individuals are persons who are elected or appointed to an office of or employed by any department, authority, or instrumentality of the state or any of its political subdivisions, or are performing, ad hoc, a governmental function. R.C. 102.01(B) and (C); R.C. 2921.01(A) and (B).

First Lady Frances Strickland

The First Lady has a stature and authority that is distinct from that of the spouse of any other public official or employee in the state. She performs significant ceremonial duties as First Lady and has a staff of state employees who assist her in fulfilling her obligations to the state. In addition, the current First Lady is the Governor's designee as the uncompensated Chairperson for the Ohio Family & Children First Council (Council).²

The Council was created by statute in 2002 as a cabinet council to help families seeking governmental services. R.C. 121.37. The Council has the authority to: (1) advise and make recommendations to the Governor and General Assembly regarding the provision of services to children; (2) develop and implement programs to improve the state's delivery of social services; (3) contract with and administer grants to county family and children first councils and other county or multicounty organizations to plan and coordinate service delivery between state agencies and local service providers for families and children; (4) contract with and apply for grant funding from the federal government and private organizations; and (5) enter into interagency agreements to encourage coordinated efforts for the delivery of social services. R.C. 121.37(A).

Funding for the Council comes from the Ohio Department of Mental Health's operating budget. In Fiscal Years 2008 and 2009, the Council's budget request was approximately \$2.9 million each year, with a combination of GRF and SSR funds. The Council utilizes a portion of this appropriation to subsidize the county family and children first councils.

As a cabinet council with the authority to enter into contracts and apply for and administer grants, the Council would be an instrumentality of the state, and therefore a public agency for purposes of the Ethics Law. Consequently, while the First Lady serves as Chairperson of the Council, she is a public official subject to the Ethics Law and related statutes apart from her role as First Lady.

Soliciting or Using Position to Secure Anything of Value—R.C. 102.03(D) and (E)

As a "public official," R.C. 102.03(D) and (E) are applicable to the First Lady:

² The Council is chaired by either the Governor or Governor's designee. The other members of the Council are the Superintendent of Public Instruction and the Directors of the Departments of Youth Services, Job & Family Services, Mental Health, Alcohol & Drug Addiction Services, Mental Retardation & Developmental Disabilities, and Budget & Management.

- (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.

"Anything of value" includes money, goods and chattels, and every other thing of value. See R.C. 1.03 and 102.01(G). A definite financial benefit, such as a contribution to a fundraising campaign, would be a thing of value under R.C. 102.03. See Ohio Ethics Commission Advisory Opinion No. 2006-03.

The Ethics Commission has held that R.C. 102.03(D) and (E) prohibit a public official or employee from accepting, soliciting, or using his or her position to secure anything of value that would directly benefit his or her personal or private financial interests, where the thing of value is of such character as to manifest a substantial and improper influence upon the public official or employee with respect to his or her duties. See Adv. Ops. No. 2001-03 and 2001-04. The Commission has also held that a public official or employee may not solicit or use his or her authority to secure anything of value for other persons or entities who have a family or business relationship to the public official or employee, such as a spouse, private employer, or business associate, where the thing of value is of such character as to manifest a substantial and improper influence upon the official or employer with respect to his duties. See Adv. Ops. No. 88-004 and 88-005.

In the situation you have described, any contributions made to the capital campaign would be within the definition of "anything of value." However, contributions made to the campaign would not accrue to the personal financial benefit of the First Lady or to any person or entity with which she has a close family, business, or economic relationship. While the Governor and the First Lady lives at the Residence, they have no ownership or financial interest in the property. The Residence is owned by the State. It is apparent that the State will benefit from the construction of the education center which will remain after the current Governor's service in that office, and residence in the property, ends.

For that reason, contributions made to the capital campaign to fund constructions of the educational center are not of such a character as to manifest a substantial and improper influence on the First Lady with respect to her public duties as the Chair of the Family and Children First Council. If the First Lady steps down from her position as Chair of the Family and Children First Council, she will no longer be a public official as a result of that service. If the First Lady, staff of the Governor's Office, or any other public official or employee has any questions about the application of the Law to the First Lady should she cease to serve in this public position, or

about the fundraising or expenditure activity of the campaign, the Commission encourages them to seek further guidance from the Commission.

Alta Beasley

With respect to Ms. Beasley, the information provided in your letter does not indicate that she is an officeholder or employee of the state or its political subdivisions. The Friends of the Residence is a non-profit organization. In her role as Vice-President of the Board, Ms. Beasley is not a public official or employee. If she is not otherwise holding a public office or public employment, Ms. Beasley is not subject to the Ethics Law and related statutes and the law does not prohibit her from engaging in fundraising in connection with the campaign.

Additional Considerations

While the law does not prohibit either the First Lady or Ms. Beasley from participating in the campaign fundraising efforts you have described, there are other considerations in situations of these kinds. As the Commission explained in Advisory Opinion No. 89-002:

In concluding that private companies are not prohibited by R.C. 102.03 from donating equipment to [a public agency], and that officials and employees of the [agency] are not prohibited from accepting or soliciting items from private companies, *it must be emphasized that all donations must be voluntary.* [Citation omitted.] Private companies are prohibited from promising, offering, or giving equipment to the [agency] with the purpose of improperly influencing officials or employees . . . with respect to their duties. [Agency] officials and employees are prohibited from soliciting or accepting equipment to improperly influence them with respect to the discharge of their official duties, and from basing any official decisions, actions, or instructions on a company's contributions or failure to contribute. Such conduct by a private company or [an agency] official or employee would be in violation of R.C. 102.03, and possibly other criminal statutes that are outside the scope of the Ethics Commission's jurisdiction. See, e.g., R.C. 2921.02. Furthermore, R.C. 102.03 would prohibit an official or employee from deriving any personal benefit or use from the donated equipment, even in situations where the equipment is of no further use to the [agency].

(Emphasis added.)

In the situation you have described, all of the individuals involved in the fundraising effort should ensure that potential donors are informed that:

- (1) Contributions to the campaign are voluntary and are not being made in connection with or return for any state contracts, grants, or other financial benefits;

- (2) A company making a donation will not be allowed to name the structure or otherwise use the building in a manner not afforded to other businesses or the general public to advertise or promote its activities (although it would be permissible to acknowledge contributors); and
- (3) The individuals involved in the fundraising efforts will not allow successful or unsuccessful fundraising efforts to affect their official obligations or activities on behalf of the general public in the favor of anyone from whom a contribution is sought or obtained.

Further, as noted above, no public official or employee can benefit personally from any contributions to the campaign.

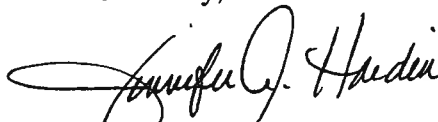
Finally, the Commission notes that at least one other member of the campaign committee is a public official or employee. While membership on the campaign committee is not, in and of itself, sufficient to implicate the restrictions in the Ethics Law, any member of the committee who is also a public servant should follow the guidelines set forth above in reference to the First Lady and Ms. Beasley. As always, public servants should be especially careful about taking any actions, while engaged in fundraising or other private activities, that could be construed as misuse of their public positions or otherwise improper.

Conclusion

As explained more fully above, the First Lady and wife of a cabinet official are not prohibited from participating in a capital campaign to raise money for the construction of an education building at the Governor's residence. However, it must be clear that: (1) contributions are voluntary and are not made or sought in connection with or return for any state contracts or financial benefits; (2) the objectivity and independence of public officials and employees are not affected by the relative success of fundraising efforts, and (3) no public official or employee involved in fundraising efforts personally benefits from the donations.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on October 2, 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,



Jennifer A. Hardin
Chief Advisory Attorney

cc: David E. Freel, Executive Director