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David E. Freel,
Executive Director

October 2, 2008 Informal Opinion 2008-INF-1002-4

Joshua A. Engle
Chief Legal Counsel
Ohio Department of Public Safety
[REDACTED]

Dear Mr. Engle:

On May 2, 2008, the Ohio Ethics Commission received your request for an advisory opinion. In your letter, you asked whether the restrictions within the Ohio Ethics Law and related statutes as they apply to the Director of Public Safety, Henry Guzmán, preclude the Ohio Department of Public Safety (ODPS) from entering into a contract with Dr. Samuel Betances to conduct diversity training for the Ohio State Highway Patrol. You have explained that Dr. Betances is an experienced teacher and author who has provided consulting on diversity issues to private and public organizations, including Fortune 500 companies, governmental agencies, community groups, community colleges, and universities.

You state that Dr. Betances is Director Guzmán's close personal friend. You also state that Director Guzmán has no business relationship with Dr. Betances.

Brief Answer

As explained below, while the Ethics Law does not prohibit ODPS from entering into a contract with a close friend of the Director, provided that the Director has no interest in the contract and that he has no family or business relationship with the potential contractor, the Director should consider both the appearance and advisability of such a contract.

Public Contract and Conflict of Interest

The Director of ODPS is a "public official" who is subject to R.C. 2921.42(A)(1), which states that no public official shall knowingly:

Authorize, or employ the authority or influence of the public official's office to secure authorization of any public contract in which the public official, a member of the public official's family, or any of the public official's business associates has an interest.

A public contract includes any purchase or acquisition of property or services by or for the use of a public agency. R.C. 2921.42(I)(1)(a). The purchase of training services by ODPS is a "public contract." See generally Ohio Ethics Commission Advisory Opinion No. 89-006.

An "interest" in a public contract must be definite and direct and can be either financial or fiduciary in nature. Adv. Op. No. 81-008. If ODPS awards a contract to Dr. Betances, then he will have a definite and direct interest in the contract. R.C. 2921.42(A)(1) prohibits a public official from acting, formally or informally, to authorize a contract whenever he, a family member, or business associate has an interest in the contract. See Adv. Ops. No. 96-005, 90-005, and 89-008 (respectively).

Dr. Betances is a close personal friend of the Director, but is neither his family member nor his business associate. Therefore, provided that the Director does not have an interest in any contract between ODPS and Dr. Betances, R.C. 2921.42(A)(1) does not prohibit the Director from participating in the award of an ODPS contract to his friend.

Director Guzmán is also a "public official" subject to R.C. 102.03(D), which reads:

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.

The term "anything of value" is defined to include money and every other thing of value. R.C. 1.03, 102.01(G); Adv. Ops. No. 82-002 and 89-003. A payment to a consultant for training services is a "thing of value." Adv. Op. No. 93-002.

R.C. 102.03(D) prohibits a public official from participating in any matter that will benefit the official, or a party with whom he has a close family, economic, fiduciary, or business relationship because these relationships may impair his objectivity and independence of judgment with respect to the decisions he must make as a public official. Adv. Ops. No. 88-004, 89-008, and 97-002.

R.C. 102.03(D) would prohibit the Director from awarding a contract, or recommending, lobbying, or otherwise using his position to secure a contract, for one of his family members or business associates. The law does not prohibit a public official from authorizing a contract to someone with whom he has a friendship, provided that there is not also a family or business relationship between the official and the contractor. Therefore, R.C. 102.03(D) does not prohibit the Director from taking any action related to a contract with a close personal friend, provided that

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the Director will not personally benefit from the contract, and that he has no family or business relationship with the contractor.

Other Consideration

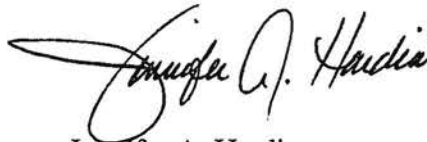
This advisory opinion interprets the Ethics Law. There are additional restrictions that may apply to the Director, contained in Executive Order 2007-01S. For more guidance about the Executive Order, the Director should contact Kent Markus, Chief Legal Counsel for the Governor's Office.

Conclusion

As explained above, while the Ethics Law does not prohibit ODPS from entering into a contract with a close friend of the Director, provided that the Director has no interest in the contract and that he has no family or business relationship with the potential contractor, the Director should consider both the appearance and advisability of such a contract.

The Ohio Ethics Commission 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,

A handwritten signature in black ink, appearing to read "Jennifer A. Hardin". The signature is fluid and cursive, with a large initial "J" and "H".

Jennifer A. Hardin
Chief Advisory Attorney