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October 29, 2009

Informal Opinion 2009-INF-1029

Sheriff Kyle A. Overmyer
Sandusky County Sheriff's Office

Dear Sheriff Overmyer:

On August 5, 2009, the Ohio Ethics Commission received your letter requesting an advisory opinion. In your letter, you explained that you are the Sheriff of Sandusky County (County). You have been offered a part-time position to teach at Terra Community College (College) located in the County. You have explained that the position has no connection with the colors of the Sheriff's Office. You have asked whether the Ethics Law prohibits you from being employed by the College.

Brief Answer

As explained more fully below, because the Sheriff is the chief law enforcement officer required to exercise all duties of his office in law enforcement matters within the County, you are prohibited from accepting employment with a College that is located within the County. You are not, however, prohibited from teaching at a facility located outside the County.

Authority of the Commission and Purpose of an Advisory Opinion

The authority of the Ethics Commission is limited to ethics issues that arise under Ohio Revised Code Chapter 102. and Sections 2921.42 and 2921.43. These statutes control against personal conflicts of interest by prohibiting public officials and employees from using their public positions to secure benefits for themselves, their family members, and their business associates.

The Commission has explained that the purpose of an advisory opinion is to explain the prohibitions within the Ethics Law and related statutes and set forth the standards and criteria that must be observed in order to avoid a violation of the law in a given set of circumstances. See Ohio Ethics Commission Advisory Opinions No. 75-037, 90-013, and 92-003. For that reason, the Commission cannot render an advisory opinion regarding the

past activities of the requester. This advisory opinion does not consider or reach any conclusions about your past actions.

Private Employment—Conflict of Interest

As the County Sheriff, you are a “public official” subject to R.C. 102.03(E), which provides:

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.

R.C. 102.01(B) and (C). The income, earnings, or other compensation that you would receive as a College employee fall within the definition of “anything of value.” R.C. 102.01(G); 1.03.

Prohibitions on Soliciting or Accepting—R.C. 102.03(E)

R.C. 102.03(E) prohibits a public official from soliciting or accepting anything of value that would have an improper influence upon him with respect to his duties. R.C. 102.03(E) prohibits solicitation or acceptance even if the officer does not use his public authority or influence to secure it. Adv. Op. No. 90-004.

The Ethics Commission has determined that the nature of the thing of value and the relationship between the official and the source of the thing of value determine whether the thing of value is of such a character as to have a substantial and improper influence on a public official with respect to his official duties. Adv. Ops. No. 86-011 and 92-015. The Commission has explained that a “thing of value” will have a substantial and improper influence on a public official if it could impair the official’s objectivity and independence of judgment because: (1) it is of a substantial nature or value; and (2) it is from a source that is doing or seeking to do business with, regulated by, or interested in matters before the agency the official serves. Adv. Op. No. 2008-02. Compensation for employment is of a substantial nature or value.

Therefore, R.C. 102.03(E) prohibits a public official, except as further described below, from accepting compensation for private employment with a party that is interested in matters before, regulated by, or doing or seeking to do business with his own public agency. A public official is prohibited from accepting, soliciting, or using his authority or influence to secure compensation from an employer who is interested in matters before, regulated by, or doing or seeking to do business with the official’s public agency. The payments received from these parties are of such a character as to improperly influence the official with respect to the performance of his official duties regarding the source of the payments. See, e.g., Adv. Ops. No. 83-007 (an employee of the Board of Cosmetology is prohibited from selling products to regulated salons) and 93-014 (a member of a board of education is prohibited from selling annuities to school district employees).

Withdrawal

The Ethics Commission has recognized that, in certain situations, a public official who engages in private employment or business activity may withdraw from consideration of matters as a public official that could pose a conflict of interest. Adv. Ops. No. 89-006 and 89-010. However, the Commission has also explained that some public officials possess unique authority from which they cannot withdraw and therefore they are prohibited from pursuing certain kinds of private employment or business activity. Adv. Op. No. 92-009. In order to be effective, a public official's withdrawal from a matter that poses a conflict of interest: (1) cannot interfere with the official's performance of his duties; and (2) must be approved by the appropriate officials at his public agency

In some instances, a public official's withdrawal from a matter will not interfere with the performance of his duties provided that: (1) the official's responsibilities can be delegated to a subordinate, with review of the subordinate's action by an official or entity independent of, or superior to, the official with the conflict of interest; or (2) there are relevant statutes that allow the official's authority to be transferred to someone who is independent of, or superior to, the official with the conflict of interest to approve the matter. See Adv. Ops. No. 92-004 and 92-008. In order for you to accept employment with the College, you would have to be able to fully withdraw from all matters that may come before the Sheriff's Office affecting the College without your withdrawal interfering with the performance of your duties.

Application of R.C. 102.03(E)

A county sheriff is the chief law enforcement officer for the county. R.C. 311.07; 1984 Op. Att'y Gen. No. 84-028. "The primary duty of the sheriff is to provide full police protection to the unincorporated areas of the county. However, the sheriff maintains police jurisdiction in all municipalities and townships in the county." In re Sulzmann (1932), 125 Ohio St. 594, 597. In this situation, the College is located within the County you serve as Sheriff.

The nature of law enforcement matters is such that a County Sheriff cannot predict when such matters will arise. Further, law enforcement matters are usually emergencies. Should a law enforcement matter arise involving the College, it is likely that you would not have time to consider how serious the matter is and whether to respond. In order to even assess the matter, you would be required to exercise your authority as Sheriff.

Further, if a law enforcement matter were to arise at the College, and you attempted to withdraw from exercising your authority regarding the matter as the chief law enforcement officer in the County, the employees of the Sheriff's office would also be unable to perform these duties. The County Sheriff exercises sole authority over the operation of the Sheriff's office. The Sheriff is the appointing authority for all employees, including deputies, in the office. R.C. 311.04. As the appointing authority of employees within the Sheriff's office, the Sheriff would be required to supervise and direct the employees' work, evaluate and assess their performance, and control their work product. Adv. Op. No. 95-006. There is no one to whom

employees in the Sheriff's office could report, other than the Sheriff, with respect to the assignment, review, or approval of law enforcement activities that arise while performing their job duties and exercising the authority of the Office. There is no statutory provision that allows for substitution of another official's authority for the Sheriff's where the Sheriff has a conflict of interest.

Your withdrawal would, in this situation, interfere with the performance of your statutorily mandated duties. For these reasons, a Sheriff is unable to withdraw from his statutorily designated duties in order to pursue private employment of the kind you describe. See Adv. Op. No. 92-004. Therefore, because of your inability to withdraw as Sheriff from law enforcement matters involving the College should they arise while you are an employee of the College, you are prohibited from accepting employment at the College during your service as County Sheriff.

However, your authority as Sheriff is limited to the county where you serve. Therefore, the Ethics Law does not prohibit you from teaching classes at a College or University in some other county.

Conclusion

As explained more fully above, because the Sheriff is the chief law enforcement officer required to exercise all duties of his office in law enforcement matters within the County, you are prohibited from accepting employment with a College that is located within the County. You are not, however, prohibited from teaching at a facility located outside the County.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on September 23, 2009. 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.

This advisory opinion, signed on October 29, 2009, corrects errors in the opinion issued to you on October 27, 2009. The October 27, 2009, advisory opinion is not valid. If you have any questions or desire additional information, please feel free to contact this Office again.

Sincerely,



Jennifer A. Hardin
Chief Advisory Attorney