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June 20, 2011

Informal Opinion 2011-INF-0620-1

Michael D. Cope
[REDACTED]

Dear Mr. Cope:

On April 13, 2011, the Ohio Ethics Commission received your request for an advisory opinion. In your request, you explained that:

- In January 2011, you were appointed to the position of Assistant Director of Business and Human Resources for the Ohio Department of Transportation (ODOT);
- At ODOT, you are responsible for personnel, facilities, finance, and information technology;
- You are not responsible for the certification, review, or selection of design and engineering consultants that do business with ODOT, although you work with the other Assistant Directors who do make these decisions;
- You are also a township trustee for Norwich Township in Franklin County;
- You are currently running for re-election for township office; and
- In the past, you have hosted fundraising events that include employees of consulting engineering firms that do or want to do business with ODOT.

Question and Answer:

Question: Can you accept campaign contributions from people who work for engineering firms that are doing or want to do business with ODOT?

Answer: Yes. You can accept a contribution to your campaign fund from a person who works for an engineering firm that does business with ODOT provided that there is no purpose to defraud, or bribery or another offense under the Revised Code, in connection with the contribution.

Campaign Contributions and Conflicts of Interest

In Advisory Opinion No. 2002-03, the Ohio Ethics Commission considered a question similar to the one you have raised. In that opinion, the Commission considered whether a public

official was prohibited from soliciting or accepting campaign contributions from a person that is doing or seeking to do business with the public agency the official serves. The Commission concluded:

1. The Ethics Law does not prohibit anyone from giving a public official, or a public official from accepting, ordinary campaign contributions; and
2. A public official cannot accept, and no person can give, campaign contributions when there has been bribery, a purpose to defraud, or any other wrongdoing under the Ohio Revised Code with respect to the contribution.

Advisory Opinion No. 2002-03 is attached for your use; the conclusions in the opinion will apply to you as if it were written for you. This opinion will explain that key provisions of the opinion that pertain to you.

Soliciting, Accepting, or Using Position to Secure Anything of Value

R.C. 102.03(D) and (E) prohibit a public official from soliciting, accepting, or using the public position to secure anything of value of a substantial nature, if the thing of value is provided by a source that is doing or seeking to do business with, interested in matters before, or regulated by, the agency that the official serves.¹ R.C. 102.03(F) prohibits any person that is doing or seeking to do business with, interested in matters before, or regulated by a governmental entity, from promising or giving anything of a substantial nature to a public official or employee connected with the entity.² “Anything of value” is defined to include campaign contributions.³

Therefore, as a township trustee, R.C. 102.03(D) and (E) prohibit you from soliciting, accepting, or using your position to secure, anything of substantial value from any person who is doing or seeking to do business with ODOT, your public employer. However, there is a specific exception regarding campaign contributions.

Exception for Campaign Contributions

R.C. 102.03(G) provides:

In the absence of bribery or another offense under the Revised Code or a purpose to defraud, contributions made to a campaign committee, political party, legislative campaign fund, political action committee, or political contributing entity on behalf of an elected public officer or other public official or employee who seeks elective office shall be considered to accrue ordinarily to the public official or employee for the purposes of divisions (D), (E), and (F) of this section.

The terms “absence of bribery or another offense under the Revised Code” and “a purpose to defraud” are explained in Advisory Opinion No. 2002-03.⁴ As an employee of ODOT running for a position as township trustee, you are a public employee who seeks elective office, and the exception in R.C. 102.03(G) would apply to you.

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The Commission concluded that the General Assembly's intention was that most campaign contributions, regardless of any connections between the official and the contributor, ordinarily accrue to the official who receives them in his or her capacity as a candidate for office. As a result, in the absence of the wrongdoing described in R.C. 102.03(G), a public official is not prohibited from accepting a campaign contribution provided to the official by any person, including a person who is doing or seeking to do business with the public agency he serves.

The situation in Advisory Opinion No. 2002-03 involved an elected official who was soliciting or accepting campaign contributions from individuals doing business with the agency he served as an elected official. In your situation, you have asked about campaign contributions coming from individuals employed by companies that are doing or seeking to do business with the state department you serve as an employee. However, it is possible that some contributors to your campaign may be individuals employed by companies that are also doing, or seeking to do, business with the public agency you serve as an elected official, or both. Provided that there is no wrongdoing in connection with the contribution, you are not prohibited from accepting a contribution to your campaign fund from any person who is an employee of a company that is doing or seeking to do business with the township or ODOT.

Other Restrictions

As you are aware, elections and campaign finance laws in Ohio are under the jurisdiction of the Ohio Elections Commission and the Office of the Secretary of State, rather than the Ohio Ethics Commission. As noted above, you may be receiving contributions from employees of vendors who perform services for the township, ODOT, or both. You may, therefore, wish to check into these other restrictions that are outside the jurisdiction of the Ethics Commission. Finally, if you have not already done so, you may want to consult with the Attorney General's Office to determine whether the positions of township trustee and Assistant Director for the Department of Transportation are compatible.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on June 17, 2011. 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

Enclosure: Advisory Opinion No. 2002-03

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The Ohio Ethics Commission Advisory Opinions referenced in this opinion are available on the Commission's Web site: www.ethics.ohio.gov.

¹ Ohio Ethics Commission Advisory Opinions No. 95-001 and 2001-03. See also *State v. Lordi*, 140 Ohio App.3d 561, 569 (2000), discretionary appeal not allowed, 91 Ohio St.3d 1523; 91 Ohio St.3d 1526 (2001) (involving a county commissioner convicted of a violation of R.C. 102.03(E) for concurrently discussing public business and soliciting private business from a township seeking road improvement funds from the county).

² Adv. Op. No. 90-001.

³ R.C. 102.01(G).

⁴ R.C. 102.03(G) states that a campaign contribution "ordinarily accrues" to a public official in the absence of the wrongdoing described in the section. Something "accrues" to a person if it is given to the official as a natural result of his activities. "accrue." Dictionary.com. *Dictionary.com Unabridged*. Random House, Inc. <http://dictionary.reference.com/browse/accrue> (accessed: June 8, 2011).