

Ben Rose, *Chair*
Betty Davis, *Vice Chair*
Merom Brachman
Michael A. Flack
Maryann B. Gall



OHIO ETHICS COMMISSION
William Green Building
30 West Spring Street, L3
Columbus, Ohio 43215-2256
Telephone: (614) 466-7090
Fax: (614) 466-8368

Paul M. Nick
Executive Director

www.ethics.ohio.gov

September 26, 2011 Informal Opinion 2011-INF-0926-3

Robert K. Schmitz, Chairman
Ohio State Racing Commission

Dear Chairman Schmitz:

On July 6, 2011, the Ohio Ethics Commission received your letter requesting an advisory opinion. As Chairman of the Ohio State Racing Commission (OSRC), you explained that:

- OSRC Commissioners and employees are invited to attend events sponsored by the horse racing industry; and
- OSRC holds some of its commission meetings at racetracks, which serve coffee, juice, donuts, and muffins to the general public at the meetings.

In an e-mail from your Assistant Attorney General, you have withdrawn your third question.

Questions and Brief Answers

1. Can OSRC Commissioners and employees attend events sponsored by the horse racing industry without paying for tickets or admission charges?

Yes, because of Ohio Administrative Code rule 3769-12-01(A), OSRC Commissioners and employees can attend events sponsored by the horse racing industry without paying a ticket or admission charge for a regulatory purpose. However, R.C. 102.03(E) prohibits an OSRC Commissioner or employee from accepting a meal, entertainment, or other substantial benefit from a permit holder at an event they have entered for a regulatory purpose.

2. Can OSRC Commissioners and employees accept refreshments at meetings at racetracks?

Yes. Provided that the refreshments provided by race track owners are of the character you have described, the value of the refreshments is not substantial. For that reason, OSRC Commissioners and employees are not prohibited from accepting the refreshments at OSRC meetings or a modestly priced meal after the meeting.

Soliciting or Accepting Things of Value—R.C. 102.03(E)

Members and employees of the OSRC are public officials or employees¹ 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.

“Anything of value” includes money and every other thing of value.² Entertainment and meals are within the definition of “anything of value.”³

R.C. 102.03(E) prohibits a public employee from soliciting or accepting a thing of value if the thing of value is of such a character as to manifest a substantial and improper influence upon the public employee with respect to his or her duties 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 employee serves.⁴ A thing of value manifests a substantial influence on a public official or employee if it could impair his or her objectivity and independence of judgment in matters affecting the source of the thing of value.⁵

The Commission has explained that R.C. 102.03(E) prohibits a public official or employee from receiving a substantial thing of value from an improper source even in situations where the official or employee is performing a function that is directly related to his or her public duties, such as conducting an inspection, representing the public agency at a ceremony, or providing information about the agency.⁶

Application to Presented Facts—Admission to Events and Dinners

Your first question involves admission to VIP viewing areas and dinners sponsored by racetracks at various events in the state. Racetracks in Ohio are regulated by the OSRC.⁷ Racetracks and other companies and individuals that hold permits issued by, or are otherwise subject to regulation by OSRC, are improper sources of gifts of substantial value to OSRC members and employees.

R.C. 102.03(E) prohibits the members and employees of OSRC from accepting free admission to events conducted by permit holders, such as the admission to the VIP tent at the Little Brown Jug, the dinner at the Ohio Derby, and the dinner at the Night of Champions, if the value of the admission or dinner is substantial. Dinners offered at events of this nature are

generally substantial in value. In fact, you state that the announced ticket cost at the VIP tent at the Little Brown Jug is \$350.00. The law would prohibit an OSRC member from accepting, from regulated companies or individuals, multiple tickets, or tickets to multiple events, even if the value of one ticket to one event is not substantial in nature.⁸

Therefore, R.C. 102.03(E) would prohibit an OSRC member from accepting admission to or dinners provided at these events. You noted, however, a rule adopted by the OSRC that applies to your question.

OSRC Rule Regarding Entry—OAC 3769-12-01

Ohio Administrative Code rule 3769-12-01(A) provides:

Members of the commission and its representatives shall have the right of full and complete entry to any and all parts of the grounds and mutuel plants of permit holders.

In some situations, the Commission has recognized that statutes outside the Ethics Law are effectively exceptions to some of the prohibitions in the Law. For example, the Commission concluded that officials or employees of a public agency are not prohibited from receiving travel expenses from an otherwise prohibited party provided that the General Assembly has statutorily authorized the agency to charge the party for the expenses.⁹

In this situation, there is no statutory authority for OSRC members or employees to attend events conducted by permit holders as guests without paying the ticket or admission charge or to accept meals or refreshments from permit holders. Rather, there is a rule that allows members and representatives of OSRC right of access.

R.C. 3679.01 provides that the OSRC can prescribe rules and conditions under which horse racing is conducted in Ohio. Under this authority, the OSRC has promulgated the rule noted above.¹⁰ If there is a regulatory reason for OSRC members or employees to enter an event at a racetrack or other facility operated by a permit holder, the rule you have cited would apply.¹¹ In that situation, members and employees of OSRC can briefly enter such an event to fulfill this regulatory purpose.

However, while OAC 3769-12-01 allows OSRC members and employees to gain access to all areas of the racetrack in order to fulfill OSRC's regulatory purpose, the Ethics Law prohibits OSRC members and employees from accepting substantial benefits from permit holders. Therefore, R.C. 102.03(E) prohibits the OSRC members from accepting a meal, entertainment, or other thing substantial benefit from the permit holder at such an event they have entered for a regulatory purpose.

Refreshments and Lunches at Meetings

In your second question, you asked whether OSRC members or employees can accept from racetracks refreshments, such as coffee, juice, donuts, and muffins, at meetings of the OSRC held at the racetracks or lunches after the meeting.

As noted above, racetracks are improper sources of things of value to OSRC members and employees. Therefore, R.C. 102.03(E) prohibits OSRC members and employees from soliciting or accepting anything of substantial value from racetracks.

The refreshments you have described are not substantial in value. OSRC members and employees are not prohibited from accepting these refreshments during OSRC meetings at racetracks. Meals that are not lavish in character are also not substantial in value. R.C. 102.03(E) does not prohibit OSRC members or employees from accepting refreshments or a moderately priced lunch from a racetrack or other permit holder.

However, the Commission has explained that even items of a nominal value can reach a substantial cumulative value.¹² Therefore, an OSRC member or employee who has been offered refreshments or meals should be careful about the cumulative value of such items from the same source over time.

Prohibition on Racetrack Owners—R.C. 102.03(F)

In addition to the prohibition on OSRC members and staff, there is a restriction that applies to permit holders. R.C. 102.03(F) provides:

No person shall promise or give to a public official or employee 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.

Therefore, permit holders are prohibited from promising or giving admission to events, or meals of a substantial value, to OSRC members or employees. The Commission also notes Ohio Administrative Code rule 3769-2-07, titled "Gifts forbidden," which reads:

No permit holder or any officer, director or employee thereof shall give or offer to any member, employee or representative of the commission or to any relative of any member, employee or representative, any thing of value with intent to influence, or which may appear to be intended to influence the member, employee or representative of the commission in the performance of his or her official duties and responsibilities.

Although the Ethics Commission does not have the specific authority to interpret this rule, it may also prohibit the racetrack from providing the entertainment and dinners you have described.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on September 26, 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

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

¹ R.C. 102.01(B) and (C).

² R.C. 1.03 and 102.01(G).

³ Ohio Ethics Commission Advisory Opinions No. 88-004 and 92-019.

⁴ Adv. Ops. No. 2001-03 and 2004-03.

⁵ Adv. Ops. No. 91-010 and 95-001.

⁶ Adv. Ops. No. 86-011 and 92-018.

⁷ R.C. 3769.03 and 3769.04.

⁸ Adv. Op. No. 95-001.

⁹ Adv. Op. No. 87-005 (R.C. 1321.53 requires the Department of Commerce, Division of Financial Institution conduct certain inspections and permits the Division to require the subject of the inspection to pay some portion of the Division's travel expenses).

¹⁰ *Carrol v. Department of Administrative Services* (1983), 10 Ohio App. 3d 108, 110 (an administrative agency may adopt rules that facilitate the execution of its statutory authority).

¹¹ *State ex rel. Melvin v. Sweeney* (1950), 154 Ohio St. 223, 234-5 (an administrative rule is invalid where it conflicts with the constitution or statutes of the State).

¹² Adv. Op. No. 92-015.