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Paul M. Nick
Executive Director

February 6, 2012

Informal Opinion 2012-INF-0206

Matthew H. Chafin
Ohio Department of Taxation



Dear Mr. Chafin:

On November 3, 2011, the Ohio Ethics Commission received your letter requesting an advisory opinion. In your letter, you explained that:

- The Ohio Department of Taxation (ODT) co-sponsors, with the Ohio Chamber of Commerce, an annual tax conference to further its public purpose of outreach and education to the interested parties;
- The Chamber is a non-profit association comprised of Ohio businesses that routinely have matters pending before ODT;
- The Chamber contracts with a for-profit company, Manufacturers' Education Council (MEC), to manage the conference;
- The cost for the conference is \$595 per attendee, with discounts for groups over three members;
- The conference lasts two days and includes continental breakfasts, lunches, refreshments, course materials, tote bags, and an after-hours reception;
- Law and accounting firms pay sponsorship fees to MEC for amenities related to the conference;

- ODT provides a significant contribution to the success of the conference, including engaging in planning the conference, preparing written material for distribution, and assigning twenty to twenty-five senior-level employees to be presenters at the conference; and
- ODT believes that it is beneficial for approximately one hundred and twenty-five other ODT employees who do not present at the conference to attend and have made an arrangement with MEC to pay a reduced rate of \$176 per employee attendees.

Question and Brief Answer

Can ODT negotiate an arrangement with MEC allowing non-presenter ODT employees to attend the conference free or at a discounted rate?

Yes. ODT is not prohibited from negotiating an arrangement with MEC allowing non-presenter ODT employees to attend the conference free or at a discounted rate. However, ODT should send only those ODT employees whose job duties and responsibilities pertain to the subject matter that is presented at the conference.

Purpose of an Advisory Opinion

The purpose of Ethics Commission advisory opinions is to provide guidance to public employees upon which they can rely before engaging in actions that may be prohibited by the Ethics Law.¹ Thus, the Commission renders an advisory opinion only in response to a question regarding prospective actions of the person requesting the opinion.² This opinion reaches no conclusions about any actions ODT employees have taken in the past. However, the opinion does provide information about the application of the Ethics Law to guide the future actions of ODT employees.

Conflicts of Interest—R.C. 102.03(D) and (E)

ODT employees are public employees³ subject to R.C. 102.03(D) and (E), which read:

- (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.

A waiver or discount on a conference registration fee is within the definition of "anything of value."⁴

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.⁵ A thing of value manifests a substantial and improper influence on a public employee if it could impair his or her objectivity and independence of judgment in matters affecting the source of the thing of value.⁶ R.C. 102.03(E) prohibits public employees from soliciting or accepting these things of value even if they have not used their authority or influence as public employees to secure them.⁷

Expenses and Conference Fees

In Advisory Opinion No. 86-011, the Ethics Commission held that a public employee was generally prohibited from accepting or soliciting conference registration fees from any person, company, or organization that is doing or seeking to do business with, regulated by, or interested in matters before the agency the employee serves. However, because the application of R.C. 102.03(E) is dependent upon all of the facts and circumstances in a particular situation, the Commission has recognized that there are situations when the law does not prohibit a public employee from accepting free conference registration from a party other than the public employee's agency.⁸

For example, your letter refers to Advisory Opinion No. 92-018. In that opinion, the Commission held that R.C. 102.03(E) did not prohibit employees of the Ohio Department of Natural Resources, who were invited to speak at a conference sponsored by an association of regulated companies, from attending the rest of the conference without paying a registration fee. The Commission reasoned that, because these Division employees attend the meetings to give presentations and provide information about the Division, any professional development benefit they receive from attending the rest of the conference is incidental to the performance of their public duties. For that reason, the benefit is not of an improper character.

Therefore, R.C. 102.03(E) does not prohibit employees at ODT who are presenters at the conference from attending the conference without paying a registration fee. However, your question involves the non-presenter employees that ODT may want to attend the conference.

ODT co-sponsors the conference and provides resources of substantial value to the attendees, including preparing written material and assigning senior-level employees to act as presenters. ODT has also determined that it is beneficial for employees who are not presenters to attend the conference in order to expand their professional knowledge and skills. These non-presenter ODT employees have job duties and responsibilities that pertain to the subject matter that is presented at the conference, and may be asked answer questions or address topics with individual attendees at the conference.⁹

Because ODT co-sponsors and provides significant resources to support the conference, and attending the conference is part of the employment activity of individual ODT employees, R.C. 102.03(E) also does not prohibit ODT employees who are not presenters at the conference from attending the conference free or at a discounted rate. In these circumstances, discounted or waived conference fees for non-presenter ODT employees would not be of such a character as to manifest a substantial and improper influence upon them with respect to their duties. Therefore, ODT is not prohibited from negotiating an arrangement with MEC allowing non-presenter ODT employees to attend either at a discounted fee or without paying a fee.

This conclusion applies only to employees of ODT whose job duties and responsibilities pertain to the subject matter presented at the conference. Further, ODT employees cannot use their attendance at the conference to receive things of value that would otherwise be prohibited by the Ethics Law. ODT employees who attend the conference can receive the meals, course materials, and tote bags provided to all attendees. However, they cannot receive amenities that are selective, differential, or in disproportion to the benefit realized by all conference attendees. All ODT employees, while attending the conference, are considered to be performing their assigned duties on public time. They should carefully account for their time and are subject to the control and direction of their supervisors.

Other Question

You have also asked whether any ethical concerns are raised if a private concern derives profits from a conference to which ODT, a state department, makes significant contributions of state resources. There are no ethical concerns raised by this situation provided that:

- ODT's participation in the matter is an appropriate expenditure of state funds for the purpose of fulfilling its statutory mandate; and

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- Any private concern that benefits from the conference is not a family member or business associate of any ODT official or employee who is making decisions about ODT's participation in the conference.

In the situation you have described, ODT's purpose for participation in the conference, outreach and education to interested parties, does appear to be appropriate.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on February 6, 2012. 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 need additional information, please feel free to contact this Office again.

Sincerely,



Jennifer A. Hardin
Chief Advisory Attorney

Enclosure: Ohio Ethics Commission Advisory Opinions No. 92-018 and 95-005

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 Opinion No. 94-002.

² Adv. Ops. No. 75-037 and 94-002.

³ R.C. 102.01(B) and (C).

⁴ Adv. Ops. No. 86-011 and 92-018.

⁵ Adv. Ops. No. 2001-03 and 2004-03.

⁶ Adv. Ops. No. 91-010 and 95-001.

⁷ Adv. Ops. No. 87-006 and 89-006.

⁸ Adv. Ops. No. 87-005, 87-007, and 95-005.

⁹ In fact, you noted that MEC has advertised that attendees will "have multiple opportunities . . . to discuss your tax problems, concerns, and issues with ALL the senior officials at the Ohio Department of Taxation." (Emphasis in original.)