

OHIO ETHICS COMMISSION

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Advisory Opinion Number 2001-03
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Syllabus by the Commission:

(1) Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a public official or employee from soliciting, accepting, or using his or her position to secure a substantial thing of value, including a golf outing at which the public official or employee would receive a round of golf, golf cart rental, and food and beverages, from a party that is interested in matters before, regulated by, or doing or seeking to do business with the public official's or employee's public agency;

(2) Division (F) of Section 102.03 of the Revised Code prohibits any person from promising or giving, to a public official or employee, anything of value, including a golf outing at which the public official or employee would receive a round of golf, golf cart rental, and food and beverages, if the person is a party that is interested in matters before, regulated by, or doing or seeking to do business with the public official's or employee's public agency;

(3) Division (A) of Section 2921.43 of the Revised Code prohibits a public servant from accepting any gift, including a golf outing, regardless of its value, and prohibits any person from giving such a gift to a public servant, if either the purpose or the result of the gift is to provide payment to the public servant in return for the performance of his or her official duties.

* * * * *

You have asked whether the Ohio Ethics Law and related statutes prohibit a public official or employee from attending a golf outing sponsored by a party who is interested in matters before, regulated by, or doing or seeking to do business with his or her public agency and accepting a round of golf, golf cart rental, and food and beverages from that party.

You have stated that you have received an invitation to attend a golf outing sponsored by a party that is doing or seeking to do business with your public agency. The golf outing includes a round of golf, golf cart rental, and food and beverages. The sponsoring party has invited other public officials and employees and individuals in the private sector to attend the golf outing. You have stated that neither you, nor any other public official or employee invited, is being offered

this golf outing in exchange for the performance of public duties. You have also stated that you would not attend the golf outing on public time.

Brief Answer

As set forth more fully below, R.C. 102.03(D) and (E) prohibit a public official or employee from soliciting, accepting, or using his or her position to secure a golf outing of substantial value from a party that is interested in matters before, regulated by, or doing or seeking to do business with the public official's or employee's public agency. R.C. 102.03(F) of the Revised Code prohibits any person from promising or giving, to a public official or employee, a golf outing of substantial value, if the person is a party that is interested in matters before, regulated by, or doing or seeking to do business with the public official's or employee's public agency. R.C. 2921.43(A) prohibits a public servant from accepting any gift, including a golf outing, regardless of its value, and prohibits any person from giving such a gift to a public servant, if either the purpose or the result of the gift is to provide payment to the public servant in return for the performance of his or her official duties.

Accepting Anything of Value

Your attention is directed 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.

The term "public official or employee" is defined for purposes of R.C. 102.03 as any person who is elected or appointed to an office or is an employee of any public agency. R.C. 102.01(B). "Public agency" means the general assembly, all courts, any department, division, institution, board, commission, authority, bureau or other instrumentality of the state, a county, city, village, township, and the five state retirement systems, or any other governmental entity. R.C. 102.01(C).

The term "anything of value" is defined, for purposes of R.C. 102.03, to include money, goods and chattels, and every other thing of value. R.C. 1.03; 102.01(G). The Ethics Commission has held that gifts, gratuities, loans, and discounts constitute things of value for purposes of R.C. 102.03. Ohio Ethics Commission Advisory Opinions No. 82-005, 91-010, 92-015, and 95-001. In the instant situation, a golf outing at which a person would provide, for the public official or employee, the green fees for a round of golf, fees for a golf cart rental, and food and beverages, is a thing of value for purposes of R.C. 102.03.

Substantial and Improper Influence

The issue before the Commission is whether the golf outing that is being offered to a public official or employee is of such a character as to manifest a "substantial" and "improper" influence upon that official or employee with respect to his or her duties. In Advisory Opinion No. 86-011, the Commission held that, when determining whether anything of value could have an improper influence upon a public official or employee with respect to the performance of his or her duties, the focus is primarily on the source of the thing of value. *Id.* The Commission held that the question of whether the gift could have a "substantial" influence depends on the nature of the thing of value. *Id.* Therefore, in the instant situation, the Commission must examine both the source and the nature of a golf outing offered to a public official or employee.

Source of Anything of Value

With regard to the source of the thing of value, the Commission has consistently held that anything of value, including discounts, conference registration fees, and travel, meal and lodging expenses, could have an improper influence on a public official or employee if it is provided to the official or employee by a party that is interested in matters before, regulated by, or doing or seeking to do business with the public official's or employee's agency. *See* Adv. Ops. No. 84-010, 89-013, 90-001, and 95-001. The Commission explained in Advisory Opinion No. 84-010 that the receipt of a thing of value from a party that is interested in matters before, regulated by, or doing or seeking to do business with the agency with which the public official or employee serves "is of such character as to manifest a substantial or improper influence upon the public official or employee with respect to his or her official duties, because it could impair his or her independence of judgment in the performance of his or her duties and affect subsequent decisions in matters involving the donor of the thing of value."

The Commission has consistently held that a public official or employee is prohibited from accepting a thing of value from any of these improper sources, even where the thing of value would be given to the public official or employee in connection with his or her official position and would benefit his or her public agency. *See* Adv. Ops. No. 86-011, 89-002, and 89-013. In the instant situation, the golf outing is being offered to a public official or employee by a party who is interested in matters before, regulated by, or doing or seeking to do business with his or her public agency. Therefore, the golf outing is being offered by an improper source. Thus, the question becomes whether the offered golf outing is "substantial," and thus a prohibited thing of value under R.C. 102.03. As discussed above, to determine whether a thing of value is "substantial," the Commission examines the nature of the thing of value.

Nature of Anything of Value

The Commission has held that a thing of value could have a "substantial" influence upon a public official or employee, with respect to the performance of his or her duties, for purposes of R.C. 102.03(D) and (E), if the thing of value is of a "substantial" nature. Adv. Op. No. 86-011. The term "substantial" is not statutorily defined for purposes of the Ohio Ethics Law. In the absence of a statutory definition or a technical meaning, words and phrases used in a statute must be construed according to common usage. *See* R.C. 1.42. In Advisory Opinions No. 75-014 and

76-005, the Commission applied the common usage standard of R.C. 1.42 to the word "substantial" as used in R.C. 102.03 and determined that "substantial" was commonly used to mean "of or having substance, real, actual, true; not imaginary; of considerable worth or value; important."

The Commission has generally found that some items are nominal or de minimis in value and will not have a substantial influence on a public official or employee. See, e.g., Adv. Ops. No. 86-003, 89-014, and 92-015. The Commission has found that a public official or employee is not prohibited from accepting a thing of value of a nominal or de minimis value from an improper source. For example, the Commission has stated that a public official or employee is not prohibited from soliciting or accepting a tee-shirt or other kind of nominal promotional item provided by a vendor or potential vendor. However, the Commission has cautioned that de minimis or nominal items or expenses could have a substantial cumulative value if extended over time. Adv. Op. No. 86-003. Further, the Commission has concluded that a public official's or employee's acceptance of even nominal things of value from certain parties could create the appearance of impropriety. Id.

The Commission has also identified some items that are clearly of a substantial value. In Advisory Opinion No. 95-001, the Commission concluded that a season ticket for professional sporting events is a substantial thing of value. Other items that the Commission has determined are substantial things of value are travel, meals, and lodging, discounts on furniture and major appliances, frequent flyer benefits accrued in connection with public travel, and a month of free parking or free gasoline, or a monthly public transit pass for commuters. Adv. Ops. No. 89-014, 91-010, 92-014, and 92-015.

Value of Golf Outings

The question, then, is whether a golf outing is a thing of value of a substantial nature. The Commission has held that the application of R.C. 102.03 is dependent on the facts and circumstances of each individual situation. Adv. Ops. No. 87-008 and 89-003. Customarily, a golf outing is composed of a round of golf, golf cart rental, and food and beverages. The facts and circumstances of each golf outing will determine whether a public official or employee is prohibited from accepting individual components of the golf outing.

The Commission has found that an individual meal of a routine character, provided to a public official or employee in certain circumstances, may not be of such a character as to manifest a substantial and improper influence upon that official or employee. See Adv. Op. No. 86-011. A public official or employee who attends a golf outing sponsored by a party who is interested in matters before, regulated by, or doing or seeking to do business with the public official's or employee's public agency, but pays for his or her own green fees and golf cart rental, would not be prohibited, by R.C. 102.03, from accepting complimentary food and beverages of a de minimis or nominal nature.

The green fees for a round of golf at a private country club can range from \$40.00 to \$200.00. The cart rental will be an additional expense to the person providing the golf outing. The combined value of the green fees, cart rental, and meal is likely to be of a substantial nature.

This decision by the Ethics Commission is consistent with a decision made in 1998 by the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court. The Board of Commissioners was asked whether it was proper for a judge to accept a round of golf or a ticket to a sporting event from an attorney. Ohio Sup. Ct. Bd. of Comm'rs on Griev. & Disc. Op. 98-10 (1998). The Board of Commissioners concluded that a round of golf and a ticket to a sports event are "things of value" for purposes of R.C. 102.03(D), (E), and (F). The Board of Commissioners went on to state:

The value of a round of golf or a ticket to a sports event in most instances would be "substantial," not de minimis. An attorney who has a case currently pending before the judge is considered interested in matters before the court on which the judge serves. Therefore, if an offer to a judge comes from an attorney who has a case currently pending before the judge or other interests that are before the judge, the offer would be of such a character as to manifest improper influence.

The same general conclusion has been judicially recognized regarding a vendor's offering of golf outings in the private sector. See In re: Claim of Fetzer vs. Ohio Bureau of Unemployment Compensation, No. L-93-055 (Lucas County Nov. 5, 1993) (company policy forbidding its employees from attending a vendor's golf outing to prevent them from being compromised or feeling obligated to a vendor, and to even avoid the appearance of impropriety, was grounded in a rational basis for determining a discharge for just cause).

Application of Prohibition to Golf Outings

Divisions (D) and (E) of Section 102.03 prohibit a public official or employee from accepting, soliciting, or using the authority or influence of his or her public position to secure a golf outing (usually including green fees for a round of golf, golf cart rental, and food and beverages) of a substantial value, if the outing is provided by a party that is interested in matters before, regulated by, or doing or seeking to do business with, his or her public agency. See also R.C. 102.03(F) (prohibiting a person from promising or giving to a public official or employee anything of value that is of such character as to manifest a substantial and improper influence upon the public official or employee with respect to his or her duties).

The prohibitions imposed by R.C. 102.03(D) and (E) serve the public's interest in objective, impartial, and effective government by preventing the creation of situations which could impair the objectivity and impartiality, and therefore the effectiveness, of a public official or employee, or his or her public agency, in matters affecting an interested or regulated party, or a party doing business or seeking to do business with the public agency. Public officials and employees must bear these prohibitions in mind any time they are offered anything from a party who is interested in matters before, regulated by, or doing or seeking to do business with their agencies. Furthermore, public officials and employees may want to consider whether the acceptance of a gift, even of a nominal or de minimis nature, from an interested or regulated party, or a party doing or seeking to do business with their agencies, would create the appearance of impropriety. See also Other Considerations below.

Giving Anything of Value—R.C. 102.03(F)

You should also note R.C. 102.03(F), which 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.

The restriction in R.C. 102.03(F) applies to any party who is promising or giving a golf outing to a public official or employee.

As explained above, a public official's or employee's acceptance of a golf outing of substantial value, from a party that is interested in matters before, regulated by, or doing or seeking to do business with the public official's or employee's public agency, could be of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to his or her duties. Therefore, R.C. 102.03(F) prohibits any party that is interested in matters before, regulated by, or doing or seeking to do business with the public official's or employee's public agency from providing a golf outing of substantial value to a public official or employee.

Sponsors of golf outings where a number of public officials or employees from one public entity are invited should also note that, even though a golf outing at a public golf course may not be of a substantial value for each individual recipient, the combined value of the outing for all of the public officials and employees invited may be substantial for the sponsor. Therefore, R.C. 102.03(F) would prohibit a party that is interested in matters before, regulated by, or doing or seeking to do business with public agencies from sponsoring a golf outing for a large number of public officials or employees if the combined nature of the outing is substantial for the sponsor. See Adv. Op. No. 92-015 ("the aggregate value of the items which a person provides to public officials and employees may be considered for purposes of Division (F)").

Supplemental Compensation—R.C. 2921.43(A)

The question presented in this opinion may also raise issues involving supplemental compensation, and thus implicate the prohibitions of Section 2921.43(A), which provide:

(A) No public servant shall knowingly solicit or accept and no person shall knowingly promise or give to a public servant either of the following:

(1) Any compensation, other than as allowed by divisions (G), (H), and (I) of section 102.03 of the Revised Code or other provisions of law, to perform his official duties, to perform any other act or service in the public servant's public capacity, for the general

performance of the duties of the public servant's public office or public employment, or as a supplement to the public servant's public compensation;

(2) Additional or greater fees or costs than are allowed by law to perform his official duties.

The term "public servant" is defined, for purposes of this section, to include any public official; any person performing ad hoc a governmental function, including, but not limited to, a juror, member of a temporary commission, master, arbitrator, advisor, or consultant; and a person who is a candidate for public office, whether or not the person is elected or appointed to the office for which the person is a candidate. R.C. 2921.01(A). "Public official" means any elected or appointed officer, or employee, or agent of the state or any political subdivision, whether in a temporary or permanent capacity, and includes, but is not limited to, legislators, judges, and law enforcement officers. R.C. 2921.01(A).

R.C. 2921.43(A)(1) prohibits a public servant from accepting any compensation, other than as allowed by R.C. 102.03(G)-(I) or other provision of law, to perform any act in his or her public capacity or generally perform the duties of his or her public position. See Adv. Op. No. 90-001. R.C. 2921.43(A)(1) also prohibits any person from promising or giving to a public servant any such outside compensation. Adv. Ops. No. 89-014 and 90-001. The exceptions set forth in R.C. 102.03(G) through (I) concern campaign contributions, and under certain circumstances, honoraria and travel, meal, and lodging expenses incurred in connection with a personal appearance or speech, or attendance at conferences, seminars, and similar events, and are not applicable in the instant situation.

The word "compensation" is not defined for purposes of R.C. 2921.43. In Advisory Opinion No. 92-014, the Ethics Commission held:

A primary rule of statutory construction is that words used in a statute must be construed according to rules of grammar and common usage. See R.C. 1.42. Furthermore, statutes "must be construed in the light of the mischief they are designed to combat." City of Mentor v. Giordano, 9 Ohio St. 2d 140, 144 (1967).

"Compensation" is defined as "payment for services: esp., wages or remuneration." See Webster's New World Dictionary 289 (2nd College Ed. 1972).

See also State v. Livesay, 91 Ohio Misc. 2d 208 (C.P. Jackson Cty. February 19, 1998) (the use of the word "compensation" in R.C. 2921.43(A) requires an exchange of a thing in return for some obligation).

R.C. 2921.43(A) prohibits a public servant from accepting any item, and any person from promising or giving a public servant any item, including a golf outing, regardless of its value, that is intended to be provided in exchange for the performance of his or her public duties. For example, a golf outing that would be provided to a public servant by a vendor in exchange for the performance of a particular duty, act, or service that is required to be performed, or for the general performance of the public duties rendered by the public servant who is invited would

constitute consideration (a golf outing) given to a public servant for performing his or her public duties (purchasing).

There is nothing in the facts of the instant situation to suggest that the party sponsoring the golf outing is offering the golf outing in exchange for the performance of a particular duty, act, or service that is required to be performed, or for the general performance of the public duties rendered by the public servant invited. While the public servant's inclusion in the golf outing may have some connection to the public servant's performance of his or her official duties, the golf outing is not being provided to the public servant in exchange for the performance of his or her public duties. Therefore, R.C. 2921.43(A) would not prohibit the public servant from accepting the golf outing if neither the purpose nor the result of the gift is to provide payment to the public servant in return for the performance of his or her official duties. However, regardless of the purpose, R.C. 102.03(D) and (E) prohibit any public official or employee from accepting anything of value, including a golf outing, from a party who is regulated by, interested in matters before, or doing or seeking to do business with his or her public agency if the thing of value is of a substantial value. See R.C. 102.03(D) and (E) discussed above.

Other Considerations

Your question may also raise issues concerning administrative rules or in-house policies that govern public agencies independent of the Ohio Ethics Law and related statutes. A public agency cannot, by rule or policy, impose a lesser standard of behavior on public officials and employees than that imposed by the Ohio Ethics Law. See Adv. Op. No. 83-004 (the Ohio Ethics Law and related statutes are general laws establishing a standard of conduct for all citizens who serve as public officials or employees, and will prevail over city charter provisions).

However, a public agency may be able to adopt rules and policies that impose a broader prohibition than those contained within the Ohio Ethics Law. These rules and policies are not within the jurisdiction of the Ethics Commission. Therefore, each public official and employee may wish to seek advice from the specific public agency he or she serves regarding the existence of any rule or policy that governs the issues presented in this opinion.

Conclusion

As set forth more fully above, R.C. 102.03(D) and (E) prohibit a public official or employee from soliciting, accepting, or using his or her position to secure a golf outing of substantial value from a party that is interested in matters before, regulated by, or doing or seeking to do business with the public official's or employee's public agency. R.C. 102.03(F) of the Revised Code prohibits any person from promising or giving, to a public official or employee, a golf outing of substantial value, if the person is a party that is interested in matters before, regulated by, or doing or seeking to do business with the public official's or employee's public agency. R.C. 2921.43(A) prohibits a public servant from accepting any gift, including a golf outing, regardless of its value, and prohibits any person from giving such a gift to a public servant, if either the purpose or the result of the gift is to provide payment to the public servant in return for the performance of his or her official duties.

This advisory opinion is based on the facts presented. It is limited to questions arising under Chapter 102, and Sections 2921.42, 2921.421, and 2921.43 of the Revised Code, and does not purport to interpret other laws or rules.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that: (1) Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a public official or employee from soliciting, accepting, or using his or her position to secure a substantial thing of value, including a golf outing at which the public official or employee would receive a round of golf, golf cart rental, and food and beverages, from a party that is interested in matters before, regulated by, or doing or seeking to do business with the public official's or employee's public agency; (2) Division (F) of Section 102.03 of the Revised Code prohibits any person from promising or giving, to a public official or employee, anything of value, including a golf outing at which the public official or employee would receive a round of golf, golf cart rental, and food and beverages, if the person is a party that is interested in matters before, regulated by, or doing or seeking to do business with the public official's or employee's public agency; and (3) Division (A) of Section 2921.43 of the Revised Code prohibits a public servant from accepting any gift, including a golf outing, regardless of its value, and prohibits any person from giving such a gift to a public servant, if either the purpose or the result of the gift is to provide payment to the public servant in return for the performance of his or her official duties.


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