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INFORMATION SHEET: ADVISORY OPINION NO. 2011-04
THINGS OF VALUE AND COMMUNITY COLLEGE EMPLOYEES

What are the questions in the opinion?

Can officials or employees of a state community college solicit or accept, from publishers doing business with the college: (1) travel expenses to attend educational conferences; (2) honoraria to attend educational conference or compensation for writing or reviewing a teaching product; or (3) royalty payments for materials used by the college to teach students?

What are the answers in the opinion?

The restrictions in the Ethics Law that are discussed in the opinion apply to all community college officials and employees except non-supervisory faculty members.

All officials and employees of a community college, except non-supervisory faculty members, are prohibited from soliciting, accepting, or using their positions to secure, from a publisher or other company doing or seeking to do business with the college:

- (1) Travel expenses to attend educational conferences;
- (2) Honoraria to attend educational conferences or compensation for writing or reviewing a teaching products unless they are able to withdraw from matters affecting the source of the payments; and
- (3) Royalties for materials used by the college to teach students unless they: (a) are able to withdraw from matters affecting the source of the payments; and (b) do not act in any way to secure the selection of their materials for use by the college.

What prompted this opinion?

The opinion was prompted by a request for advice.

When did the conclusions in this opinion become effective?

The opinion became effective when it was rendered by the Commission on April 28, 2011.

For More Information, Please Contact:

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ADVISORY OPINION NO. 2011-04 IS ATTACHED.**

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Advisory Opinion
Number 2011-04
April 28, 2011
**TRAVEL EXPENSES,
HONORARIA, AND
ROYALTIES**

Syllabus by the Commission:

- (1) The restrictions that are discussed in this opinion apply to all community college officials and employees except non-supervisory faculty members;
- (2) All non-teaching officials and employees of a community college, and all supervisory faculty members, are prohibited from soliciting, accepting, or using their positions to secure, from a publisher or other company doing or seeking to do business with the college:
 - (a) Any portion of travel expenses to attend educational conferences; and
 - (b) Honoraria or other compensation for attending any part of a conference, reviewing books, teaching products, or software products, or writing chapters or providing articles for textbooks or teaching aids, unless they fully withdraw from matters affecting the source of the payments;
- (3) All non-teaching officials and employees of a community college, and all supervisory faculty members, are prohibited from accepting royalties for a book or teaching aid that is used by the college to teach students, unless they: (a) fully withdraw from matters before the college that affect the publisher; and (b) do not act in any way to secure the selection of their book or aid for use by the college.

* * * * *

The Ohio Ethics Commission has been asked a number of questions about the application of the conflict of interest law (R.C. 102.03(D) and (E)), to officials and employees, including faculty members, of a community college. The conflict of interest law applies to all college officials and employees, except some faculty members. There are two classes of faculty members:

- Supervisory faculty members: Faculty members who exercise or have the authority to exercise any kind of administrative or supervisory authority are subject to the conflict of interest restrictions discussed in this opinion.
- Non-supervisory faculty members: Faculty members who do not exercise or have the authority to exercise any kind of administrative or supervisory authority are not subject to the conflict of interest restrictions discussed in this opinion.

Questions and Brief Answers

1. Can college officials or employees accept, from publishers or other companies doing or seeking to do business with the college, reimbursement for any portion of travel expenses to attend educational conferences or sessions sponsored by the sources of the reimbursements?

Yes, non-supervisory faculty members can accept the reimbursements.

No, all non-teaching college officials and employees and all supervisory faculty members cannot accept the reimbursements.

2. Can college officials or employees accept honoraria for attending any portion of conferences?

Yes, non-supervisory faculty members can accept the honoraria.

Yes, all non-teaching college officials and employees and all supervisory faculty members can accept the honoraria if the sources of the payments are not doing or seeking to do business with, regulated by, or interested in matters before the college. All non-teaching college officials and employees and all supervisory faculty members cannot accept the honoraria if the sources are publishers or others doing or seeking to do business with the college, unless the officials and employees fully withdraw from any matters before the college that affect the sources of the honoraria.

3. Can college officials or employees accept, from publishers, honoraria for reviewing books, teaching products, or software products?

Yes, non-supervisory faculty members can accept the honoraria.

No, all non-teaching college officials and employees and all supervisory faculty members cannot accept the honoraria if the sources are publishers that are doing or seeking to do business with the college, unless the officials and employees fully withdraw from any matters before the college that affect the sources of the honoraria.

4. Can college officials or employees accept compensation for writing chapters or providing articles for textbooks or teaching aids?

Yes, non-supervisory faculty members can accept this compensation.

No, all non-teaching college officials and employees and all supervisory faculty members cannot accept, from publishers that are doing or seeking to do business with the college, compensation for writing or providing these materials unless they fully withdraw from any matters before the college that affect the source of the compensation.

5. Can any college official or employee who has a copyright for a book or teaching aid accept royalties if the book or teaching aid is used by the college to teach students?

Yes, non-supervisory faculty members can accept the royalties.

No, all non-teaching college officials and employees and all supervisory faculty members cannot accept royalties for the sale of such a book or aid, unless they: (a) fully withdraw from any matters before the college that affect the source of the royalties; and (b) do not act in any way to secure the selection of the book or aid for use by the college.

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

This opinion considers¹ the “conflict of interest laws,” R.C. 102.03(D) and (E):

- (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.

“Anything of value” is defined to include money and every other thing of value.² The Commission has explained that a “thing of value” will have a substantial and improper influence on a public official or employee if it could impair that person’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 he or she serves.³ Because most of your questions involve publishers, this opinion will focus on sources that are doing or seeking to do business with the college.

While the term “substantial” is not statutorily defined, the Commission has determined it means “of considerable worth or value.”⁴ The Commission has concluded that items of nominal value will not have a substantial influence upon a public official or employee unless they are given repeatedly and reach a substantial cumulative value.⁵

Travel Expenses and Honoraria

Travel expenses are within the definition of “anything of value.”⁶ Payment or reimbursement of all, or a significant portion of, travel expenses a person would incur to attend an educational conference would be substantial in nature.⁷ Honoraria, or other kinds of payments for appearing at conferences and other events, are also within the definition of “anything of value,” and are substantial in nature.⁸

As noted, any company or person that is doing or seeking to do business with a college is an improper source of things of value to officials or employees of the college. However, the Commission has explained that a public official or employee is not prohibited from accepting honoraria or other kinds of compensation from an otherwise improper source where that person is able to withdraw from consideration of any matters affecting the source.⁹ The ability to withdraw applies only when the thing of value is some kind of compensation. A public official or employee cannot withdraw from matters affecting a source of travel expenses, gifts, or similar things of value in order to accept these items.

A public official’s or employee’s withdrawal may be accomplished only when it: (1) does not interfere with the performance of his or her assigned duties; and (2) is approved by the official’s or employee’s agency.¹⁰ The public agency must determine whether it is possible or desirable to accommodate a public official’s or employee’s request to withdraw from particular matters in order to accept honoraria. Therefore:

- Because they are not subject to conflict of interest laws, non-supervisory faculty members are not prohibited from accepting travel expenses or honoraria to attend conferences from any person.
- One of the conflict of interest laws, R.C. 102.03(E), prohibits all non-teaching college officials and employees and all supervisory faculty members from soliciting or accepting, from a publisher or anyone else doing or seeking to do business with the college:
 - All or any part of travel expenses to attend a conference; and
 - Honoraria for attending conferences, unless they are able to and do fully withdraw from all matters involving the source.

- The conflict of interest laws do not prohibit non-teaching college officials and employees or supervisory faculty members from accepting honoraria if the sources of the payments are not doing or seeking to do business with, regulated by, or interested in matters before the college, such as an association or educational organization.
- Another conflict of interest law, R.C. 102.03(D), prohibits all non-teaching college officials and employees and all supervisory faculty members from using their public positions to secure honoraria or other compensation from any source.

Honoraria for Reviewing Educational Materials

Honoraria, or other kinds of compensation for reviewing a book, teaching product, or software product are also within the definition of anything of value and are substantial in nature.¹¹ Any company or person that is doing or seeking to do business with a college, such as a publisher, is an improper source of honoraria or other compensation to officials or employees of the college. However, a public official or employee is not prohibited from accepting compensation from an otherwise improper source where the agency the official or employee serves determines that the person is able to withdraw from consideration of any matters affecting the source and does withdraw from those matters.¹² Therefore:

- Because they are not subject to the conflict of interest laws, non-supervisory faculty members are not prohibited from accepting honoraria for writing or reviewing a book, article, textbook chapter, or other educational materials.
- One of the conflict of interest laws, R.C. 102.03(E), prohibits all non-teaching college officials and employees and all supervisory faculty members from accepting the honoraria if the sources are publishers that are doing or seeking to do business with the college unless they fully withdraw from all matters involving the potential source of compensation.
- Another conflict of interest law, R.C. 102.03(D), prohibits all non-teaching college officials and employees and all supervisory faculty members from using their public positions to secure honoraria or other compensation from any source.

Accepting Royalty Payments for Copyrighted Materials

A person who has obtained a copyright on a book or teaching aid, and receives a royalty for the sale of that item, is receiving a thing of value that is of a substantial character.¹³ Any company or person that is doing or seeking to do business with a college, including a publisher, is an improper source of royalty payments to officials or employees of the college. However, as explained, a public official or employee is not prohibited from accepting compensation from an otherwise improper source where the agency the official or employee serves determines that he or she is able to withdraw and does withdraw from consideration of any matters affecting the source.¹⁴ Therefore:

- Because they are not subject to the conflict of interest laws, non-supervisory faculty members who have obtained copyrights on books or teaching aids are not prohibited from accepting royalties if the book or teaching aid is used by the college.
- One of the conflict of interest laws, R.C. 102.03(E), prohibits all non-teaching college officials and employees and all supervisory faculty members from soliciting or accepting royalty payments from publishers that are selling or seeking to sell goods or services to the college, unless the officials or employees fully withdraw from matters affecting the publishers.

Another conflict of interest law, R.C. 102.03(D), prohibits a public official or employee from accepting a thing of value that results from his or her participation in a matter before his or her public agency.¹⁵ If a public official or employee is in a position to make decisions or recommendations that result in a benefit to his or her private interests, the Ethics Law prohibits the official from participating in the decision or making the recommendation. Therefore:

- All non-teaching college officials and employees and all supervisory faculty members who have obtained copyrights on books or teaching aids are prohibited from using their positions to secure royalty payments.
- These officials and employees are prohibited from recommending, discussing, or otherwise using their influence on a curriculum committee or other administrators or faculty members to secure the selection of their materials. A supervisory faculty member subject to these restrictions must abstain from any formal and informal discussion or decision-making about the use of his or her own materials. For example, they are prohibited from:
 - Recommending their copyrighted material for selection by the college or other college faculty members;
 - Requiring students in their own classes to purchase their copyrighted materials;
 - Participating in a curriculum committee that is considering selection of materials for which they own copyrights; or
 - Participating in any other discussion or decision-making related to the selection of their copyrighted materials for use in the college's classes

Neither of the conflict of interest restrictions prohibits a non-teaching college official or employee or any supervisory faculty member from accepting royalty payments for copyrighted material if the material is selected for use in any of the college's classes, without the official's or employee's participation. For example, if a college curriculum committee, without any action or involvement of a faculty member, selects educational materials for which the faculty member has a copyright for use in a class taught by another faculty member, or in the faculty member's own class, the faculty member is not prohibited from accepting royalties from the sale of those materials to students in the classes.

Policies

If a community college has adopted rules or policies on these matters, it must ensure that they comport with the restrictions discussed in this advisory opinion. A public agency cannot create a policy or rule that is less restrictive than the prohibitions in the Ethics Law.¹⁶

Conclusion

This advisory opinion 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.

Therefore, it is the opinion of the Ohio Ethics Commission, and the Commission advises that: The restrictions that are discussed in this opinion apply to all community college officials and employees except non-supervisory faculty member. All non-teaching officials and employees of a community college, and all supervisory faculty members, are prohibited from soliciting, accepting, or using their positions to secure, from a publisher or other company doing or seeking to do business with the college: (a) Any portion of travel expenses to attend educational conferences; and (b) Honoraria or other compensation for attending any part of a conference, reviewing books, teaching products, or software products, or writing chapters or providing articles for textbooks or teaching aids, unless they fully withdraw from matters affecting the source of the payments. Finally, all non-teaching officials and employees of a community college, and all supervisory faculty members, are prohibited from accepting royalties for a book or teaching aid that is used by the college to teach students, unless they: (a) fully withdraw from matters before the college that affect the publisher; and (b) do not act in any way to secure the selection of their book or aid for use by the college.

By my signature below, I certify that Advisory Opinion No. 2011-04 was rendered by the Ohio Ethics Commission at its meeting on April 28, 2011.



Ben Rose, Chair
Ohio Ethics Commission

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

¹ This advisory opinion does not consider the application of the law to college officials or employees where the college itself purchases materials that are written by a college official or employee.

² R.C. 102.01(G); Ohio Ethics Commission Advisory Opinion No. 2001-04.

³ Adv. Op. No. 2009-01. See also Ohio Sup.Ct., Bd Comm'rs on Grievances and Discipline, CPR Op. 98-010 (1998) (The Board of Commissioners also concluded that the application of R.C. 102.03(D) and (E) depend on the source and amount of a thing of value provided to a judge.)

⁴ Adv. Op. No. 2009-03.

⁵ Adv. Op. No. 2009-01.

⁶ Adv. Ops. No. 2001-04.

⁷ Adv. Op. No. 2003-03.

⁸ Adv. Op. No. 99-003.

⁹ Adv. Ops. No. 89-006 and 96-004.

¹⁰ Adv. Ops. No. 89-006, 89-010, and 90-002.

¹¹ Adv. Ops. No. 96-004.

¹² Adv. Ops. No. 89-006 and 96-004.

¹³ Adv. Ops. No. 96-004.

¹⁴ Adv. Ops. No. 89-006 and 96-004.

¹⁵ Adv. Op. No. 96-004.

¹⁶ Adv. Op. No. 2009-02.