



OHIO ETHICS COMMISSION

150 EAST BROAD STREET
COLUMBUS 43215
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Advisory Opinion No. : 80-004

June 11, 1980

Syllabus by the Commission:

Division (D) of Section 102.03 of the Revised Code prohibits a member of a state licensing board from accepting the payment of registration fees and lodging for his attendance at a conference sponsored by a professional association whose members are regulated by the board.

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In your request for an Ohio Ethics Commission Advisory Opinion, you asked whether the Ohio Ethics Law and related statutes would prohibit a member of a state licensing board from receiving registration fees and lodging for attending a conference sponsored by a professional organization whose members are licensed by the board.

You stated, by way of history, that the persons in question are members of a state board which licenses the members of a particular profession. The state professional association will sponsor a conference, which will include a session on licensure, the major function of the board. This state association has offered to pay the registration fees and lodging for the board members' attendance at the conference. Several board members would be asked to participate in the session on licensure.

Division (D) of Section 102.03 of the Revised Code provides:

No public official or employee shall use or attempt to use his official position to secure anything of value for himself that would not ordinarily accrue to him in the performance of his official duties, which thing is of such character as to manifest a substantial and improper influence upon him with respect to his duties.

The elements of Division (D) of Section 102.03 of the Revised Code are: 1) a public official or employee; 2) is prohibited from using or attempting to use his official position; 3) to secure anything of value for himself; 4) the thing of value is something that would not ordinarily accrue to him in the performance of his official duties; and 5) the thing of value is of such character as to manifest a substantial and improper influence upon him with respect to his duties. Violations of Division (D) of Section 102.03 of the Revised Code depend upon the specific facts and circumstances of the particular case.

A member of a state licensing board is a "public official or employee" as that term is defined in Division (B) of Section 102.01 of the Revised Code. The payment of registration fees and lodging at a conference is "something of value" that would not ordinarily accrue to a

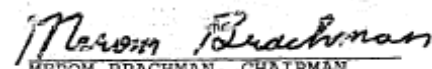
member of a state board in the performance of his official duties. In addition, the solicitation or acceptance of a fee, in the form of an honorarium, payment, or other reimbursement could constitute improper use or attempted use of official position (See: Ohio Ethics Commission Advisory Opinion No. 79-006).

In Ohio Ethics Commission Advisory opinion No. 79-006, the Commission concluded that "Division (D) of Section 102.03 of the Revised Code prohibits a public official or employee from soliciting or receiving an honorarium for delivering a speech or participating in a seminar sponsored by a private corporation, if the honorarium is received from a party interested in matters before the agency with which the official or employee serves, or regulated by the agency." In that case, the Commission concluded that the application of Division (D) of Section 102.03 of the Revised Code turned on whether receipt of the honorarium would be "of such character as to manifest a substantial and improper influence upon (the public official or employee) with respect to his duties." The Commission reasoned that this is a question of fact that depends on: 1) the nature of the honorarium; and 2) the party from whom it is received. In the instant case, the board members would receive payment for registration fees and lodging in exchange for the participation of certain board members in one session of the conference. The payment would be made by an organization whose members are directly regulated by the board; therefore, this association is "a party interested in matters before the agency with which the official or employee serves." The Commission believes that such an arrangement could manifest a substantial and improper influence upon a board member with respect to his duties, since it could affect subsequent decisions in matters involving the organization and its members.

We conclude, therefore, that Division (D) of Section 102.03 of the Revised Code prohibits a member of a state board from accepting payment of registration fees and lodging at a conference sponsored by a professional association whose members are regulated by the board. It is important to note, however, that this opinion would not prohibit the members of the board from attending the conference, but merely from attending at the expense of a professional association whose members are directly regulated by the board.

The conclusions of this advisory opinion are based on an examination of the facts presented. The Ohio Ethics Commission cautions that its advisory opinions may be relied upon only with respect to questions arising under Chapter 102. and Section 2921.42 of the Revised Code, and do not address possible violations of other laws or rules.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that: Division (D) of Section 102.03 of the Revised Code prohibits a member of a state licensing board from accepting the payment of registration fees and lodging for his attendance at a conference sponsored by a professional association whose members are regulated by the board.


HEROM BRACHMAN, CHAIRMAN
OHIO ETHICS COMMISSION