



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
8 EAST LONG STREET, SUITE 210
COLUMBUS, OHIO 43215
(614) 466-7090

Advisory Opinion Number 86-003
February 26, 1986

Syllabus by the Commission:

(1) Division (D) of Section 102.03 of the Revised Code prohibits an employee of the Ohio Veterans Home from using his official position to secure his designation as an executor, administrator, or beneficiary of a resident's estate or any other thing of value from a resident.

(2) Division (D) of Section 102.03 of the Revised Code prohibits an employee of the Ohio Veterans Home from soliciting or receiving gifts, gratuities, loans, or any other thing of value from a resident.

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You asked whether the Ohio Ethics Law and related statutes would prohibit an employee of the Ohio Veterans Home from: (1) being an executor, administrator, or beneficiary under the last will and testament of a resident; and (2) soliciting or receiving gifts, gratuities, loans, or other things of value from a resident.

You stated, by way of history, that the Ohio Veterans Home (hereinafter Veterans Home) provides retirement and nursing home facilities for veterans. You stated further that residents occasionally wish to designate employees of the Veterans Home as executors, administrators, or beneficiaries of their estates. You also stated that residents sometimes show appreciation by offering gifts, gratuities, loans, or other things of value to employees of the Veterans Home. You asked whether such practices are prohibited.

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

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 Veterans Home, established pursuant to Chapter 5907. of the Revised Code, is a "public agency" as defined in Division (C) of Section 102.01 of the Revised Code, since it is an institution of the state. An employee of the Veterans Home is a "public official or employee" as defined in Division (B) of Section 102.01 of the Revised Code, because he is an employee of a public agency. Since an executor or administrator of a will is entitled to compensation for his services, designation as an executor or administrator is within the definition of "anything of

value" in Section 1.03 of the Revised Code. In addition, money or property received under the terms of a will, and gifts, gratuities, loans, or other similar items are within the statutory definition of "anything of value." It is clear that designation as an executor, administrator, or beneficiary would not ordinarily accrue to an employee of the Veterans Home in the performance of his official duties. Gifts, gratuities, loans, and other similar things of value may appear to be more common, but they also would not ordinarily accrue to an employee of a retirement and nursing facility in the performance of his official duties.

The residents of the Veterans Home are dependent on the services provided by the employees of the facility, and an employee of the Veterans Home would be in a position to secure things of value from a resident under his care. As a result, such things of value would be of such character as to manifest a substantial and improper influence on an employee of the Veterans Home in the performance of his official duties. Therefore, Division (D) of Section 102.03 of the Revised Code prohibits an employee of the Veterans Home from using his official position to secure his designation as an executor, administrator, or beneficiary of a resident's estate or other things of value from a resident.

Under certain circumstances, things of value may be offered voluntarily by a resident to an employee of the Veterans Home without any use of official position by the employee. However, the Commission has held in past opinions that merely soliciting or receiving things of value from certain sources may result in a conflict of interest. For example, a public official or employee is prohibited from soliciting or receiving honoraria, lodging, registration fees, travel expenses, and other things of value from parties that are regulated by, doing or seeking to do business with, or interested in matters before the agency with which he serves (See: Ohio Ethics Commission Advisory Opinions No. 79-002, 79-006, 80-004, and 84-010). In the instant case, residents of the Veterans Home are interested parties with regard to the care provided by the facility, since they are under its jurisdiction, care, and control. Thus, Division (D) of Section 102.03 of the Revised Code prohibits an employee of the Veterans Home from soliciting or receiving gifts, gratuities, loans, or other things of value from a resident of the facility.

Of course, some gifts, gratuities, loans, or other things may be of such little value as to be de minimus for purposes of the criminal prohibition. However, such small gifts or gratuities may have a substantial cumulative value, if extended over time. In addition, the receipt of gifts, gratuities, loans or other things of value from a resident would create the appearance of impropriety. Thus, an employee should decline any gift or gratuity.

In the case of the designation of an employee as an executor, administrator, or beneficiary under a resident's will, the value accrues in the future. Also, the employee may not have sought the appointment or bequest and may be unaware that he has been included in the will. Under such circumstances, the appointment or bequest would not have a substantial and improper influence on the employee in the performance of his official duties. Nevertheless, it would create the appearance of impropriety, since the employees of the Veterans Home may appear to have undue influence upon a resident who makes such decisions concerning a will. Thus, an employee of the Veterans Home should decline designation as an executor, administrator, or beneficiary of a resident's estate, or the receipt of the proceeds of the estate.

Finally, current law contemplates bequests or gifts to institutions. For example, gifts, devises, and bequests may be made to public authorities pursuant to Section 9.20 of the Revised Code. In addition, Section 5907.11 of the Revised Code provides that the Veterans Home may receive donations for its Home Improvement Fund. The Ohio Ethics Law and related statutes do not prohibit a resident from making a gift, devise, bequest, or donation to the Veterans Home, provided that he enters the transaction voluntarily.

The conclusions of this opinion are based on the facts presented, and are limited to questions arising under Chapter 102. and Section 2921.42 of the Revised Code.

Therefore, it is the opinion of the Commission, and you are so advised, that: (1) Division (D) of Section 102.03 of the Revised Code prohibits an employee of the Ohio Veterans Home from using his official position to secure his designation as an executor, administrator, or beneficiary of a resident's estate or any other thing of value from a resident; and (2) Division (D) of Section 102.03 of the Revised Code prohibits an employee of the Ohio Veterans Home from soliciting or receiving gifts, gratuities, loans, or any other thing of value from a resident.


Merom Brachman, Chairman
Ohio Ethics Commission