



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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Advisory Opinion Number 87-007
August 14, 1987

Syllabus by the Commission:

- (1) Divisions (D) and (E) of Section 102.03 of the Revised Code do not prohibit a public official or employee from soliciting, accepting, or using the authority or influence of his office or employment to secure travel expenses from a party which is doing business with his agency, where the requirement that trips be provided by the party to officers or employees of the public agency for the purpose of conducting official business is included in the public agency's bid specifications, and ultimately in the contract executed between the party and the public agency;
- (2) Division (F) of Section 102.03 of the Revised Code does not prohibit a party from promising or giving travel expenses to a public official or employee of a public agency with which it is doing business, where the requirement that trips be provided by the party to officers or employees of the public agency for the purpose of conducting official business is included in the public agency's bid specifications, and ultimately in the contract executed between the party and the public agency.

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You asked whether the Ohio Ethics Laws and related statutes prohibit officials and employees of the Ohio Lottery Commission from receiving travel expenses from parties which are doing business with the Commission where such expenses are paid pursuant to contract.

By way of history, you state that the Lottery Commission sells a marketing-oriented product, the vendors of which are generally located out-of-state. As a result, the Lottery Commission, in promulgating bid specifications, will include a requirement that a certain number of roundtrip flights be provided to Commission officers and employees, so that they may approve the quality of the product or discuss contractual matters. After the successful bidder is chosen, this matter becomes a term of the contract executed between the Commission and the vendor. When Commission officers and employees find it necessary to visit the vendor's headquarters, the vendor will purchase airline tickets, and make them available to the officers or employees. You wish to know whether the receipt of such travel expenses by officers or employees of the Lottery Commission would violate the Ohio Ethics Law.

Divisions (D), (E), and (F) of Section 102.03 of the Revised Code provide as follows:

- (D) No public official or employee shall use or authorize the use of the authority or influence of his 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 him with respect to his 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 him with respect to his duties.

(F) 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 him with respect to his duties.

The term "public official or employee" is defined for purposes of R.C. 102.03 to include any person who is appointed to an office, or is an employee of, any commission of the state. See R.C. 102.01(B) and (C). The Lottery Commission is established as a commission within state government. See R.C. 3770.01. Thus, officers and employees of the Commission are "public officials and employees" for purposes of R.C. 102.03.

The Ohio Ethics Commission has determined that travel, meal, and lodging expenses fall within the meaning of "anything of value," as that term is used in Section 102.03, and that the receipt of travel, meal, and lodging expenses from a party who is interested in, regulated by, or doing or seeking to do business with a public official's or employee's agency would be of such a character as to manifest a substantial and improper influence upon a public official or employee with regard to his duties; the Commission has concluded, consequently, that Divisions (D) and (E) of Section 102.03 prohibit a public official or employee from soliciting, accepting, or using the authority or influence of his position to secure travel, meal, and lodging expenses if such expenses are paid by a party that is interested in matters before, regulated by, or doing or seeking to do business with the agency with which he serves. See Ohio Ethics Commission Advisory Opinions No. 80-004, 84-010, and 86-011. Furthermore, Division (F) of Section 102.03 prohibits parties who are interested in matters before, regulated by, or doing or seeking to do business with a public agency from promising or giving travel, meal, and lodging expenses to an official or employee of that agency. See Advisory Opinion No. 87-005.

Your question involves the receipt of travel expenses by Commission officers and employees from parties who are doing business with the Lottery Commission. In this instance, however, the requirement that roundtrip flights be provided by such parties is included by the Commission in its bid specifications, and subsequently, as a term of the contracts executed between the Commission and successful bidders. It is apparent that parties, in submitting a bid to the Commission, will include the cost of the trips in their proposals, and that such expenses are a cost included in the final contract price. Therefore, the travel expenses are a cost for which the Commission pays consideration. Ultimately, it is the Commission which bears the cost of the trips. Under these circumstances, the travel expenses are not of such a character as to manifest a substantial and improper influence upon a Lottery Commission officer or employee. Therefore, Divisions (D) and (E) do not prohibit an officer or employee of the Lottery Commission from soliciting, accepting, or using his authority or influence to secure such travel expenses. Further, Division (F) does not prohibit a vendor from promising or giving such expenses to a Commission officer or employee.

In reaching these conclusions, it is presumed, of course, that the purpose of the trips is to conduct official business and that no recreational or other personal purpose is served by the trip. The receipt of such expenses must be limited to that amount which is essential to the officers' or employees' travel.

This advisory opinion is based on the facts presented, and 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 you are so advised, that: (1) Divisions (D) and (E) of Section 102.03 of the Revised Code do not prohibit a public official or employee from soliciting, accepting, or using the authority or influence of his office or employment to secure travel expenses from a party which is doing business with his agency, where the requirement that trips be provided by the party to officers or employees of the public agency for the purpose of conducting official business is included in the public agency's bid specifications, and ultimately in the contract executed between the party and the public agency; and (2) Division (F) of Section 102.03 of the Revised Code does not prohibit a party from promising or giving travel expenses to a public official or employee of a public agency with which it is doing business, where the requirement that trips be provided by the party to officers or employees of the public agency for the purpose of conducting official business is included in the public agency's bid specifications, and ultimately in the contract executed between the party and the public agency.

Merom Brachman

Merom Brachman, Chairman
Ohio Ethics Commission