



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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Advisory Opinion Number 89-002
January 20, 1989

Syllabus by the Commission:

The Ohio Ethics Law and related statutes do not prohibit private companies from donating industrial and safety equipment to the Industrial Commission, so long as no official or employee of the Commission benefits personally from the equipment, and so long as the donation is voluntary.

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You have asked whether the Ohio Ethics Law and related statutes prohibit private companies from donating to the Industrial Commission industrial and safety equipment. This equipment would be provided either at no cost to the Industrial Commission or at a "substantially reduced or nominal price" in order to "enhance the quality" of the safety training programs conducted by the Industrial Commission's Division of Safety and Hygiene.

You have stated, by way of history, that the Division of Safety and Hygiene of the Industrial Commission (hereinafter Division) provides safety consulting services to all employers and employees in Ohio. One of the Division's primary services is providing safety training courses to all employers and employees throughout the state. You have indicated that these courses are supported from the Safety Fund which is constitutionally mandated and drawn from Workers' Compensation premiums. See Ohio Const. Art. 11, S35, R.C. 4121.37. You also state that industrial and safety equipment may be dismantled or destroyed during these training classes in order to demonstrate the character of workplace hazards and the construction of safety measures. You further state that the industrial and safety equipment would be secured, solicited, or accepted from private companies by the Division's instructors and also by the coordinator of the Division's safety training programs. You have stated that all equipment acquired by the Division would become part of the Division's physical inventory for use in the Division's safety training classes and that the Division's instructors would have no other use for these items.

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

(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.

R.C. 102.01(B) defines a "public official or employee" 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(C) defines the term "public agency" to include any commission of the state. The Industrial Commission is a statutorily created commission of the state responsible for ascertaining, ordering, and enforcing standards which safeguard the life, health, safety, and welfare of employees and frequenters of places of employment. See R.C. 4121.02, 4121.13. Thus, officials and employees of the Industrial Commission are "public officials or employees" who are subject to the prohibitions of Section 102.03 of the Revised Code.

R.C. 1.03 defines "anything of value" for purposes of R.C. 102.03 to include money, goods and chattels, and every other thing of value. See R.C. 102.01(G). A definite pecuniary benefit is considered to be a thing of value under R.C. 102.03. See Advisory Opinions No. 79-008, 80-003, 85-006, 85-011, and 86-007. Therefore, industrial and safety equipment, provided at either no cost to the Industrial Commission, or at a "substantially reduced or nominal price," would be "anything of value" for purposes of R.C. Section 102.03.

The Ethics Commission has consistently held that a public official or employee is prohibited by R.C. 102.03(D) and (E) from accepting, soliciting, or using his position to secure anything of value that would directly benefit his personal or private pecuniary interests, where the thing of value is of such character as to manifest a substantial and improper influence upon the public official or employee with respect to his duties. See Advisory Opinions No. 80-007, 85-006, 86-003, 86-007, and 88-004. The Commission has further held that a public official or employee may not accept, solicit, or use his authority to secure anything of value for other persons or entities who have a family or business relationship to the public official or employee outside the scope of his official responsibilities, such as a spouse, private employer, or business associate, where the thing of value is of such character as to manifest a substantial and improper influence upon the official or employer with respect to his duties. See Advisory Opinions No. 79-008, 80-003, 84-010, 85-011, 87-004, 88-004, and 88-005. The issue in this instance is whether the equipment donated by private companies to the Industrial Commission itself or solicited by Commission officials and employees for the use and benefit of the Commission would be of such character as to manifest a substantial and improper influence upon the officials and employees of the Industrial Commission with respect to their duties.

In addressing this issue, the relationship between the Industrial Commission and private companies must first be examined. The Industrial Commission regulates places of employment in Ohio regarding all matters of safety, with the responsibility to ascertain, order, and enforce standards to safeguard the life, health, safety, and welfare of employees and frequenters of places of employment. See generally R.C. 4121.13. To accomplish these responsibilities, the Industrial

Commission may "[a]scertain, fix, and order such reasonable standards for the construction, repair, and maintenance of places of employment as shall render them safe." R.C. 4121.13(C). Employers are prohibited from violating a specific safety rule of the Industrial Commission, or act of the General Assembly. See R.C. 4121.47(A). The Industrial Commission may, in the course of determining Workers' Compensation claim, find that an employer violated a specific safety rule of either the Industrial Commission or act of the General Assembly and, in addition to the award paid the claimant, order the employer to correct the violation and, in some instances, assess civil penalties up to fifty thousand dollars against the employer. See R.C. 4121.47(B). Thus, every employer doing business or with a workplace in the state of Ohio is a party regulated by the Industrial Commission.

The Ethics Commission has held that a public official or employee is prohibited by R.C. 102.03(D) and (E) from accepting, soliciting, or using his position to secure anything 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 official or employee serves. See Advisory Opinions No. 79-002, 79-006, 80-004, 84-010, and 86-011. Conversely, 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 anything of value to an official or employee of that agency. See Advisory Opinion No. 87-005. In order to fully understand the scope of this interpretation of R.C. 102.03, the line of advisory opinions developing the interpretation must be examined.

The Ethics Commission has held that a public official or employee is prohibited from accepting, soliciting, or using his position to secure anything of value from a party that is interested in matters before, regulated by, or doing or seeking to do business with his agency in instances where the thing of value would have been received for the sole benefit of the public official or employee, with no attendant benefit being received by the public agency with which the public official or employee served. See. Advisory Opinion No. 79-002 (a public official or employee is prohibited from soliciting or receiving a fee for consulting services from a private firm that is interested in matters before or regulated by the agency with which the official or employee serves).

This standard, however, has also been applied in instances where the thing of value would be given directly to the public official or employee, but in connection with his official position, and under circumstances that would directly or indirectly benefit his public agency. For example, the Commission has held that a public official or employee is prohibited from accepting conference registration fees, honoraria, or travel, meal, and lodging expenses from an improper source even where he is representing his agency in a ceremonial function, is providing information about his agency, its duties, or the area it administers, or is attending a conference or seminar for his professional development or education. See Advisory Opinions No. 79-006, 80-004, 84-010, and 86-011. The Ethics Commission has further held that a public official or employee is prohibited from receiving travel, meal, and lodging expenses from a party that is interested in matters before, regulated by, or doing or seeking to do business with, his public agency, even where the payment of such items would be directly related to the required performance of his official duties, and would directly benefit his public agency by relieving the agency of the necessity of paying for such expenses. See Advisory Opinion No. 86-011 (citing

the example of a regulated party paying the expenses of an official or employee to inspect the site of a facility required as part of a permit application, enforcement action, or compliance review).

In all of the above-cited opinions, payment was prohibited where made to the public official or employee himself rather than to the public agency he served, even though in some instances, the payment benefited the agency, or was related to the performance of the officials or employee's official responsibilities. The direct payment or contribution of money or other items of value to a public official or employee from a party whose interests may depend upon the performance of that officials or employee's official responsibilities is of such character as to unduly influence or impair the objectivity of the official or employee, and thus is prohibited by R.C. 102.03. R. C. 102.03 would also prohibit a public official or employee from accepting, soliciting, or using his position to secure anything of value from an improper source, for the benefit of his spouse, private employer, or business associate related to the official or employee in his personal capacity. See e.g., Advisory Opinion No. 84-010. Payments or donations for these persons could affect the public officials or employee's objectivity or independence of judgment, and thus, be of such character as to improperly influence him with respect to his duties. See Advisory Opinions No. 79-008, 84-010, 87-004, 88-004 and 88-005.

In Advisory Opinion No. 86-003, however, the Commission held that although R.C. 102.03 prohibits an employee of the Ohio Veterans Home from soliciting, receiving, or using his position to secure gifts, loans, or any other thing of value from the Home's residents, "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." See also Advisory Opinion No. 87-005 (R.C. 102.03 does not prohibit a party from promising or giving to a public agency that regulates such party travel, meal, and lodging expenses which the public agency is statutorily authorized to charge as costs incurred during the inspection or examination of such party). Section 9.20 of the Revised Code authorizes the state to "receive by gift, devise, or bequest moneys, lands, or other properties." The General Assembly has, therefore, expressed an evident intent that the State be permitted to receive donations from outside sources, and this intent should not be disturbed in the absence of express statutory language to the contrary.

As discussed above, R.C. 102.03 has been interpreted to apply only to those situations where a public official or employee, or someone to whom he is related in his private capacity, would receive a thing of value. R.C. 102.03(D) and (E) prohibit individuals - public officials and employees - from improperly accepting, soliciting, or using their position to secure anything of value. The prohibitions of R.C. 102.03(D) and (E) do not apply to the receipt of items by the state, or any agency, board, or commission thereof. Similarly, R.C. 102.03(F) prohibits donations to individuals - public officials and employees - rather than to the state or an agency thereof.

In the course of a donation to a state agency, an official or employee of that agency will necessarily be involved in the solicitation or acceptance of that donation on behalf of the agency. In this instance, the Division's instructors and coordinator of the safety training programs would solicit and accept items from the companies.

In Advisory Opinion No. 88-005, the Commission held that although R.C. 102.03(D) would generally prohibit a public official or employee from participating in a matter from which a corporation of which he was trustee would benefit, this prohibition does not apply where the official serves on the board of the corporation in his capacity as a public official and is representing the interests of his public agency on the board. Advisory Opinion No. 88-005 states:

As discussed above, R.C. 102.03(D) would, generally, prohibit a city official from discussing or participating in any matter that would benefit a corporation of which he is a trustee, since the benefit would be of such a character as to manifest a substantial and improper influence upon him with respect to his duties. In this instance, however, the city officials are serving on the board of the community improvement corporation in their official capacity, and are representing the interests of the city on the board. Therefore, any benefit accruing to the corporation from the city, such as the rezoning of the corporation's property, would not be of such a character as to manifest a substantial and improper influence upon the city officials with respect to their duties, since they serve on the board of the corporation as part of their official duties. The rezoning of the corporation's property would not accrue to the city officials' personal benefit or to the benefit of any party with which the city officials are connected in their personal capacities. Rather, the benefit would accrue to an agency which the city officials have been charged to serve as part of their official responsibilities. Therefore, the benefit accruing to the corporation as a result of the rezoning would not be of such a character as to manifest a substantial and improper influence upon the officials with respect to their duties. (Emphasis added.)

Similarly, in this instance, the officials or employees would be soliciting or accepting the donations in their official capacities with the Industrial Commission. The donations are not accruing to the officials' or employees' personal benefit or to the benefit of anyone with whom they are connected in their personal capacities. The benefit is accruing to the agency which they serve in their official capacity and they are soliciting or receiving the donations as part of their official responsibilities. Therefore, the donations to the Industrial Commission would not be of such a character as to manifest a substantial and improper influence upon the officials or employees with respect to their duties. R.C. 102.03(D) does not prohibit, therefore, private companies from donating equipment to the Industrial Commission, nor officials or employees of the Industrial Commission from accepting or soliciting the equipment on behalf of the Commission, even though the companies are regulated by the Industrial Commission.

In concluding that private companies are not prohibited by R.C. 102.03 from donating equipment to the Industrial Commission, and that officials and employees of the Industrial Commission are not prohibited from accepting or soliciting items from private companies, it must be emphasized that all donations must be voluntary. See Advisory Opinion No. 86-003. Private companies are prohibited from promising, offering, or giving equipment to the Industrial Commission with the purpose of improperly influencing officials or employees of the Commission with respect to their duties. Commission officials and employees are prohibited from soliciting or accepting equipment to improperly influence them with respect to the discharge of their official duties, and from basing any official decisions, actions, or instructions on a company's contributions or failure to contribute. Such conduct by a private company or a

Commission official or employee would be in violation of R.C. 102.03, and possibly other criminal statutes that are outside the scope of the Ethics Commission's jurisdiction. See, e.g.,

R.C. 2921.02. Furthermore, R.C. 102.03 would prohibit an official or employee from deriving any personal benefit or use from the donated equipment, even in situations where the equipment is of no further use to the Commission. See Advisory Opinion No. 87-007.

Commission officials and employees who use the donated equipment in class demonstrations must refrain from endorsing, or indicating that the Commission endorses, the purchase of that particular brand of equipment, especially in instances where the donor is a manufacturer or vendor of the equipment or would otherwise profit from the sale of equipment.

Also, there may be specific instances where the donation of equipment would create the appearance of impropriety. For example, companies should refrain from donating items, and the Commission should refrain from accepting such items, in instances where a specific case is pending before the Commission involving that company, or where the Commission could reasonably foresee that an action will come before the Commission.

As a final matter, this opinion should not be interpreted as permitting payment of officials' or employees' honoraria or expenses directly to their public agency by parties who are regulated by, interested in matters before, or doing or seeking to do business with, the public agency. These payments may implicate Section 2921.43 of the Revised Code, which prohibits a public servant from soliciting or accepting compensation, other than as allowed by law, to perform his official duties, or as a supplement to his public compensation, and prohibits any person from promising or giving such compensation to a public servant. Section 2921.43 provides an exception for honoraria or expenses allowed under R.C. 102.03(G)-(I). However, R.C. 102.03(G)-(I) do not allow the payment of honoraria or expenses for public officials or employees by parties that are regulated by, interested in matters before, or doing or seeking to do business with the officials' or employees' public agency. See Advisory Opinion No. 86-011.

This advisory opinion is based on the facts presented, and is rendered only with regard to questions arising under Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code.

Therefore, it is the opinion of the Ethics Commission, and you are so advised, that the Ohio Ethics Law and related statutes do not prohibit private companies from donating industrial and safety equipment to the Industrial Commission, so long as no official or employee of the Commission benefits personally from the equipment, and so long as the donation is voluntary.


Richard D. McKson, Chairman
Ohio Ethics Commission