



OHIO ETHICS COMMISSION

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Advisory Opinion Number 94-006
November 18, 1994

Syllabus by the Commission:

Division (H) of Section 102.03 of the Revised Code does not prohibit a public official or employee who is required to file a financial disclosure statement under Section 102.02 of the Revised Code from receiving compensation for classroom teaching at institutions of higher education.

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You have asked whether the Ohio Ethics Laws and related statutes prohibit public officials or employees who are required by R.C. 102.02 (A) to file a financial disclosure statement with the Ohio Ethics Commission from receiving compensation as consideration for part-time teaching at institutions of higher education. You have asked the Ethics Commission to address this question in light of the amendment enacted by Am. Sub. H.B. 492 which prohibits a public official or employee who files a financial disclosure statement from receiving an honorarium. You have also asked the Commission to address the issue of public officials or employees contracting with an institution to teach part-time during hours that would require an alteration of their work schedule.

You state that the individual public officials and employees who wish to teach at the educational institutions have no current or pending business relationships with the institutions. You state that these public officials and employees do not perform public duties which, in any way, involve the institutions, even though their public agency exercises responsibilities involving the institutions and has previously assigned these duties to other officials and employees. You also state that the public duties of these officials and employees do not include teaching. You further state that the officials and employees will teach on weekends and evening hours.

As explained below, the Ohio Ethics Laws and related statutes do not prohibit public officials and employees who file financial disclosure statements from receiving compensation for engaging in classroom instruction at institutions of higher education under the circumstances described. Also, the Ethics Commission has held, in prior advisory opinions, that a public agency has the discretion to alter the schedule of a public official or employee in order to accommodate outside employment interests where there is no conflict of interest; however, the agency is under no obligation to make such accommodations.

The issue whether the Ohio Ethics Laws and related statutes prohibit public officials or employees who are required to file a financial disclosure statement with the Ohio Ethics

Commission from receiving compensation as consideration for teaching classes at institutions of higher education will be addressed first.

No public official or employee . . . who is required to file a financial disclosure statement under section 102.02 of the Revised Code shall solicit or accept, and no person shall give to that public official or employee, an honorarium.

The Ethics Commission first addressed the issue of a public official or employee receiving an "honorarium" in 1979, fifteen years prior to the enactment of Am. Sub. H.B. 492. In Advisory Opinion No. 79-006, the Commission responded to a situation in which a private corporation invited the division chief of a state department that regulated the corporation to give a speech and participate in a panel discussion at a seminar sponsored by the corporation. The corporation asked the division chief to participate because of his expertise in the field and offered him an honorarium. The division chief asked the Ethics Commission whether the Ohio Ethics Law and related statutes prohibited him from receiving the honorarium.

In response to the division chief's question, the Ethics Commission held that R.C. 102.03 (D) prohibits a public official or employee from receiving an honorarium for giving a speech or participating in a panel discussion as part of a seminar sponsored by a private party that is regulated by the public official's public agency. The Ethics Commission explained:

[The] receipt of a fee, in the form of an honorarium, from a party "interested" in matters before the department or division with which the public official or employee serves, or "regulated" by the agency, may manifest a substantial and improper influence upon the official or employee with respect to his duties, since it could affect subsequent decisions by the official or employee in matters involving the donor of the honorarium.

Therefore, prior to the enactment of Am. Sub. H.B. 492, the Ethics Law and related statutes would not have prohibited a public official or employee from receiving honoraria, or any other thing of value, from individuals or others beyond those prohibited parties who were doing or seeking to do business with, interested in matters before, or regulated by, the public agency of the public official or employee. Since 1979, the Ethics Law required that the Ethics Commission examine the source of a substantial thing of value in order to determine whether a public official or employee is prohibited from engaging in private outside employment or other compensated activity. See Ohio Ethics Commission Advisory Ops. No. 79-002, 84-009, 87-006, and 89-010.

In examining the source of things of value provided to public officials and employees who furnished teaching services, the Ethics Commission has considered the relationship between the public official or employee and the entity for which he would perform teaching services. In Advisory Opinion No. 90-009, the Commission held that a member of the Real Estate Appraiser Board was prohibited from accepting compensation for providing teaching services for sponsors of courses that constituted the educational prerequisites for individuals to become state-certified real-estate appraisers, the continuing educational courses required to maintain that certification, or examination preparatory courses, unless he was able to withdraw from all matters that would directly affect the sponsor for which he provided teaching services. See also Advisory Ops. No. 88-002 (addressing whether the deputy director of the Office of Budget and Management, who

serves as the President of the Controlling Board, may receive compensation for teaching at a state university) and 89-006 (addressing the issue of employees of the Department of Mental Health receiving compensation for teaching at institutions that receive grants from ODMH).

However, due to the enactment of Am. Sub. H.B. 492, R.C. 102.03 (H) prohibits a public official or employee who files a financial disclosure statement from receiving honoraria from any source, regardless of the lack of any actual or potential contractual or regulatory connection between the donor and the public official's or employee's agency.

[A]ny payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or similar gathering.

In order to address your question, it is necessary to examine the word "speech" in the context of the phrase "any speech given" in R.C. 102.03 (H), which was amended by Am. Sub. H.B. 492. The Ethics Commission, in interpreting statutes containing words that are not statutorily defined, has consistently followed the rule of statutory construction that words used in a statute must be construed according to rules of grammar and common usage. See R.C. 1.42. See also Advisory Ops. No. 75-006 and 87-002. Webster's New World Dictionary, Second College Edition, (1976) at 1368, defines the word "speech" as "a talk or address given to an audience." Therefore, while it may be apparent that R.C. 102.03 (H) prohibits a public official or employee from receiving consideration for "a talk or address given to an audience," the issue remains whether the receipt of compensation for part-time teaching at an institution of higher education is an honorarium since teaching will generally involve speaking.

In Advisory Opinion No. 75-015, which addressed the issue of a faculty member of a state institution receiving compensation from a state agency, the Ethics Commission recognized that "education is the principal function of both university and teacher." Education is defined in Webster's New World Dictionary, Second College Edition, (1976) at 444, as "the process of training and developing the knowledge, mind, character, etc., esp. by formal schooling." It is interesting that this definition of education stresses formal schooling.

It is apparent that teaching at institutions of higher education may include, but not be limited to, talks or addresses presented to an audience. However, teaching at institutions of higher education will generally embrace a free exchange of ideas between teacher and student that will extend beyond the mere giving of a talk or address. Also, a teacher at an institution of higher education may engage in activity that does not include giving a talk or address, such as preparing and conducting examinations, reviewing assigned exercises, and evaluating a student's performance.

In recently addressing this issue, the Board of Commissioners on Grievances and Discipline of the Supreme Court in Opinion Number 94-12, held that R.C. 102.03 (H) did not prohibit a judge from accepting compensation for teaching at colleges and universities on topics related to the law, the legal system, or the administration of justice. See R.C. 102.01 (F)(2) (the Board of Commissioners on Grievances and Discipline of the Supreme Court is the appropriate advisory authority for judges and judicial employees on questions regarding the Ethics Law and

related statutes). The Board of Commissioners on Grievances and Discipline of the Supreme Court held:

[T]eaching and speaking are not necessarily identical activities. In fact, the words "teach" and "speak" are not synonyms. To teach is to impart knowledge and skill. To speak is to engage in spoken exchange. See e.g., Roget's II The New Thesaurus 878, 939 (1980).

Teaching at a state or private university or college is an activity intended to impart knowledge and skill. The courses taught are part of a planned educational process. Academic goals are defined. Academic credit is offered and must be earned. Students enroll in the courses to earn credit and reach academic goals. Instructors must be qualified to teach the subject matter presented. Instructors perform various duties such as planning lessons, giving lectures, guiding discussions, administering tests, performing evaluations, and remaining available for consultation if needed beyond the classroom hours. In contrast, a speaking activity is characteristically a singular or isolated event, not part of a planned educational process. Academic credit is not offered or earned. Students are not enrolled in order to earn credit and reach goals. A speaker's duties are usually limited to preparation and delivery of the speech.

Generally, this Commission agrees with the Board of Commissioners on Grievances and Discipline in its description of what may constitute teaching. However, there is a need to further delineate the difference between speaking and teaching.

There may be instances where teaching will consist of a singular or isolated event. In such a circumstance, the teaching will be akin to giving "a talk or address . . . to an audience" despite the fact that the teaching is part of a planned educational process where academic credit is offered and earned. For example, state law requires individuals engaged in certain occupations to complete continuing education in order to maintain a license to practice. It is apparent that programs that provide continuing education are part of a planned educational process for which those attending receive credit.

However, a person who gives a presentation at a continuing educational seminar or conference of relatively short duration would not be involved in activities between teacher and student which extend beyond the presentation; rather, the presentation is a singular or isolated event. A person who engages in this type of activity makes "a talk or address given to an audience," which would fall within the definition of "honorarium" as defined by R.C. 102.01 (H). Therefore, R.C. 102.03 (H) prohibits a public official or employee who is required to file a financial disclosure statement from receiving compensation for this type of activity.

It is obvious that by holding otherwise, R.C. 102.03 (H) could be easily circumvented and there would exist an opportunity for public officials or employees to accept a fee for giving a speech or attending a public or private conference by simply describing their activity as teaching. On the other hand, an interpretation of R.C. 102.01 (H), which holds that honorarium includes any compensation offered for engaging in any activity that involves speaking would preclude a public official or employee from engaging in almost any outside private employment. For example, such an interpretation would preclude attorneys who serve on state boards and

commissions, and attorneys who are employed by state agencies, from representing clients by appearing before public agencies other than their own and the courts.

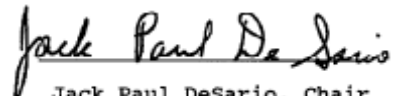
This Commission is not convinced that the legislative intent of R.C. 102.01 (H) is to bar all outside private employment that involves speaking. An interpretation that R.C. 102.03 (H) bars all outside employment that involves speaking would render other provisions of the Ethics Law unnecessary. See R.C. 102.03 (A) and 102.04 (A) and (C) (restricting officials and employees from representing clients or personally rendering services under certain circumstances). See also R.C. 1.49 (in interpreting a statute, the consequences of a particular construction may be considered) and Dougherty v. Torrence, 2 Ohio St. 3d 69 (1982) (in interpreting a statute, reference is made to the fact that if the legislature intended a particular meaning, it could easily have found apt words or phrases to express that meaning, especially where it has used such words or phrases in another connection).

You have also asked the Commission to address the issue of public officials or employees contracting with an institution to teach part-time during hours that would require an alteration of their work schedule.

In Advisory Opinion No. 89-010, the Ethics Commission addressed whether a state agency could accommodate an employee who engaged in private outside employment by excusing or reassigning him in order to avoid a conflict of interest under the Ethics Law and related statutes. The Ethics Commission held that it is within the discretion of the public agency to determine whether such accommodation is possible or desirable and if the agency determines that it is unable, or does not desire to make special arrangements for its officials or employees, "it is under no obligation to do so." Advisory Op. No. 89-010.

This advisory opinion is based on the facts presented. It 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 opinion of the Ohio Ethics Commission, and you are so advised, that: Division (H) of Section 102.03 of the Revised Code does not prohibit a public official or employee who is required to file a financial disclosure statement under Section 102.02 of the Revised Code from receiving compensation for classroom teaching at institutions of higher education.


Jack Paul DeSario, Chair
Ohio Ethics Commission