Roundtable – Part One (Gifts)

(Intro music and fade into scene)

Jennifer: Thanks so much for joining us today on “Ethics News You Can Use.” I’m your host, Jennifer Carson. Glad you could be here this week to discuss timely issues in the world of government ethics in Ohio. We have a great program lined up for today, but first let me introduce our guests.

First we have Molly Peterson, an attorney and Chief Ethics Officer for one of Ohio’s largest state agencies, the Ohio Department of Life Quality which employs more than 5,000 state employees. So, I’m sure you get lots of questions on many topics, Molly, but certainly the Ohio Ethics Law. Thanks for joining us.

Molly: Glad to be here.

Jennifer: Next we have Joe Bowman, a Training Coordinator for Ohio’s largest city, Utopia. In his position, Joe organizes more than 500 annual trainings, including ethics issues. Welcome, Joe.

Joe: Thanks for having me.

Jennifer: And finally, Pamela Tuttle, a reporter for the online newspaper, The Voice of Ethics. Pamela covers issues ranging from ethics issues in government, business and non-profits. Nice to see you again, Pam.

Pam: Always good to be good here, Jennifer.

Jennifer: So, let’s jump right in. Of course, there are so many issues we could tackle today in the ethics arena, but I want to start with one that’s in the newspaper even as of this morning. (looks at newspaper). A county executive in one of Ohio’s major industrial counties, Benedict County is accused of accepting some serious “wining and dining” as we often call it on the show. An article in today’s Utopia Times outlines numerous gifts and outings provided to County Commissioner Jack Cotton from a company with significant construction contracts with the county. Pam, can you give us a synopsis on what Commissioner Cotton has done?

Pam: Well, first of all, what he allegedly has done.

Pam: Right. Our on-line paper actually broke this story last week, even though it’s just hitting the print papers today. The thing is, though, it doesn’t really seem to be a “new” story.

Jennifer: How do you mean?

Pam: Well, the allegation is that Commissioner Cotton has been accepting significant gifts from the Lance Rivers Construction Company for years. This is a company that has consistently had contracts with that county to build or renovate county government buildings.

Jennifer: And when you say “significant gifts” what are we talking about?

Pam: Our sources are saying the Commissioner was the regular recipient of expensive meals, tickets to professional sporting events and even a high quality wrist watch.

Jennifer: Let me bring the Chief Ethics Attorney, Molly Peterson in. Molly, is the issue here one of bribery? Is that the problem – that the county is giving this construction company business because they hand out extravagant gifts?

Molly: No, bribery is a completely different situation. Obviously, if we have a public official or employee who grants public contracts in exchange for a gift, we’re looking at a potential crime. But the absence of bribery doesn’t mean a violation of law hasn’t occurred.

Jennifer: (Good naturedly, not mean-spirited). Oh boy, the lawyer-talk has begun. Let me get my coffee and my dictionary.
Molly: (laughs) Okay, let me say it this way. Bribery is a fairly obvious crime, right? You give me this in exchange for that. That’s not what we’re talking about under the Ethics Law in Ohio. In Ohio, the gift or “thing of value” given to a public employee or public official doesn’t have to actually influence the person. The law just says that as a public employee, I can’t accept a substantial thing of value from certain people or companies if it could influence me in my public duties.

Jennifer: Certain people? Such as?

Molly: Companies that do business with the public agency, or they’re seeking to do business with. Someone that’s regulated by the agency or even someone with specific interests in matters before the agency.

Pam: And if I can jump in here, Jennifer...

Jennifer: Of course.

Pam: When I started looking into the allegations about Commissioner Cotton, it became clear pretty quickly that he understood what Molly is describing. I think the Ethics Commission refers to these prohibited sources of gifts as “improper” sources, you know, the vendors, regulated parties, etc. Commissioner Cotton had attended numerous trainings provided by the Ethics Commission and should have known what it meant by an “improper” source or someone who, as you say, can’t wine and dine him extensively.

Jennifer: Speaking of training, let’s have Joe weigh in on this. Joe, you provide training about the Ethics Law to your agency, yes?

Joe: That’s right.

Jennifer: So, is this the kind of issue that you hear about at those trainings? People who are getting tickets to NFL games or Broadway shows?

Joe: Well, I think a lot of public servants would probably point out that those kinds of gifts aren’t offered to them on a daily basis. But it does happen, so it’s important to know what the law says so they can be prepared if it does happen.

Jennifer: What kinds of “gift” questions are you getting?

Joe: Well, we base our trainings on the modules we receive from the Ethics Commission, DVDs, e-courses and the like. One of the things that we point out to our staff is that gifts that are considered “nominal” are actually not forbidden.
Jennifer: Nominal. Help me out here; what does that mean?

Joe: Modest occasional gifts. Some of the things listed in the Ethics Commission’s fact sheets mention things like a promotional item, like a coffee mug, or a small food gift—a tin of popcorn, or similar smaller inexpensive gifts.

Pam: Joe’s exactly right. If someone called a tip into our paper about a public employee getting a plate of cookies, we’re hardly going to put someone on that story. But when we’re talking golf outings or dinner at exclusive restaurants, we’re going to look into that.

Molly: Right, from a legal perspective, I’m right with you, Pam. There is a huge difference between someone accepting a t-shirt from a vendor and someone accepting a ticket to a Cirque du Soleil show. Legally, it’s different.

Joe: And it’s different from a communications point of view, too. As a trainer, I try to help people understand the appearance issue.

Jennifer: Talk to me more about that.

Joe: Well, it’s understandable that a member of the general public wants to know that someone who does government work—in all its forms, doing reviews, inspections, granting contracts, whatever—is doing that work free from any conflicts of interest. Right here at this table, we’re all taxpayers, so we have the right to know that public decisions are made objectively.

Jennifer: So people in the public sector shouldn’t be asking for or taking these extravagant gifts...

Molly: Technically, the legal word is “substantial...”

Jennifer: Okay, substantial gifts. Let me make sure I’m hitting the points here. I’m a public employee or an elected official, I’m not taking substantial things of value from (Jennifer counts on fingers) my agency’s vendors, the companies or people my agency regulates, or the people with interests in things going on before my agency. Am I missing one?

Molly: People who are seeking to do business with the agency.

Jennifer: Right, right. So, those are our “improper” sources. Essentially, parties who shouldn’t give the substantial things of value to public servants.

Molly: Exactly.
Joe: I think it’s good to point out here, though, that while gifts to individual public officials or employees is problematic, gifts to a public agency aren’t.

Pam: I’m glad you brought that up, Joe, because it’s one of the issues that my paper looked at in our recent series the Ethics Law and public officials. It’s actually an important distinction between a public servant accepting a gift and the public in general receiving that gift.

Jennifer: Does that happen? Gifts to an agency, I mean?

Joe: Oh, sure. I grant you, a lot of us work for agencies that don’t see donations, per se, but it does happen.

Jennifer: And that’s legal?

Molly: Well, like Pam said, as long as the gift really is given to the agency – essentially given to the public – it’s fine.

Jennifer: When you were researching the story, Pam, what kinds of gifts to agencies did you hear about?

Pam: It could range from a playground company donating a swing set to a Parks and Rec program to someone “throwing in” boxes of copy paper to a state agency that orders a new photocopy machine. When we interviewed the Ethics Commission, they indicated that as long as that gift is actually used for public purposes and doesn’t end up at someone’s home, it’s acceptable.

Jennifer: That makes sense. Along those same lines of an outside party “donating” gifts, Joe and I were talking before the show about the issues that come up when public employees attend conferences.

Joe: Yes, I get questions from our staff about things like door prizes and raffles. It’s very common that vendors who are advertising at a conference will donate door prizes for random drawings.

Molly: And the issue is: who gets to keep the prize?

Pam: Ah, a new story lead! (they laugh)

Jennifer: Well, let’s go right to the horse’s mouth on this one. I want to welcome via teleconferencing Julie Varney from the Ohio Ethics Commission. Julie, how are you today?
Julie:  (on screen) I’m good, Jennifer. Thanks for having me on the show today.

Jennifer:  Glad you could be here. So, Julie, we’re tackling this issue of government people getting “stuff” at conferences that they attend as part of their work. What wisdom can you impart?

Julie:  (smiles) Well, I’m not sure if I should personally claim the wisdom part, but I can tell you what the Ethics Commission’s precedent is.

Jennifer:  Please.

Pam:  And, Julie, if you don’t mind me butting in…

Julie:  Certainly.

Pam:  I liked Julie’s use of the word precedent. That’s important to emphasize that this precedent does exist. As part of my work covering ethics stories, I read the Ethics Commission’s advisory opinions all the time. And they really are a helpful guide in understanding what people should and shouldn’t be doing. Sorry to cut you off, Julie.

Julie:  No, I appreciate the commercial for those advisory opinions. And Pam’s absolutely right. They present the Ethics Commission’s advice on how to comply with the law in specific situations and circumstances.

Jennifer:  So, there is something in writing about this conference question?

Julie:  Absolutely. I was listening to the beginning of the program and noticed that you all discussed the difference between substantial and nominal gifts and you also defined that phrase “improper source.”

Jennifer:  Right.

Julie:  So, if the Ethics Law says public servants cannot solicit or accept substantial gifts from improper sources, then that’s the equation we would use in evaluating what to do with a door prize.

Joe:  That’s what I always say at my trainings. If the door prize is something like a pencil set or a ball cap, it’s not an issue, right?

Julie:  Exactly; those items are no “substantial” things of value. But when we’re talking about expensive electronic equipment, exotic trips, or Big 10 football tickets, we’ve got a problem.
Joe: So, Jennifer, if you don’t mind me asking Julie a question...

Jennifer: Go for it.

Joe: Julie, the “push back” that I often get during my trainings is that the prize didn’t come from someone that the agency is working with. Or that the person who won the prize doesn’t necessarily have the authority to make contract decisions.

Molly: But even if that vendor doesn’t have a current public contract, they attend the conference to solicit business. That’s enough to make them an improper source.

Julie: That’s exactly it, Molly. And the fact that the person attending the conference isn’t the contract decision-maker doesn’t change the fact that it is an improper source providing a substantial thing of value.

Jennifer: So, if they draw your name out of the hat, what do you do? Hide in the bathroom? (they laugh)

Julie: Well, there are really two options. One is to decline the door prize. Or if the prize is something my agency can use for official public work, like a laptop, I can accept it on behalf on my agency and then bring it back to the office.

Pam: Not to your house! Or I will hunt you down. (they laugh again)

Julie: I believe you, Pam!

Molly: Julie, I have wondered about the 50/50 raffles and so forth that happen at conferences.

Julie: Well, the other thing we have to be careful of as public servants is something called Supplemental Compensation.

Jennifer: So, nobody augmenting your salary in other words?

Julie: Precisely. If I am attending a conference on public time as part of my job, earning extra money shouldn’t play into that equation.

Joe: But if we get questions from our staff that we’re not sure about, we can tell them to call the Ethics Commission, right?

Julie: Always. We are available to help public servants make the right choices under the Ethics Law.
Pam: Which, I might add, protects the public. Our readers should be able to know that government positions aren’t used for personal gain.

Julie: I couldn’t agree more, Pam.

Jennifer: Okay, so we’ll be watching as the case against Commissioner Cotton proceeds. Pam, I assume you’ll keep us updated on that?

Pam: I’ll be on it.

Jennifer: We need to take a quick break, but after this commercial break, we’re going to tackle another important issue under the Ethics Law – nepotism. You won’t want to miss this, so stay with us.