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Advisory Opinion Number 95-001
February 8, 1995

Syllabus by the Commission:

Division (E) of Section 102.03 of the Revised Code prohibits a city council member from accepting free season tickets from a professional athletic team that plays its games in a stadium located within the city.

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Issue - Free Sports Season Tickets

The Ethics Commission has been asked whether the Ohio Ethics Laws and related statutes prohibit city council members from accepting free season tickets from a professional athletic team that plays its games in a stadium located within the city.

As explained below, the Ohio Ethics Laws and related statutes prohibit city council members from accepting free season tickets from a professional athletic team under the facts described in this opinion. The prohibition against city council members accepting free season tickets is not negated by the fact that city council members, after accepting the free tickets, may provide the free tickets to their constituents instead of using them personally.

Facts

You state that the professional athletic team plays its home games at a newly constructed stadium in the downtown area. The city used its power of eminent domain to acquire the land upon which the stadium is located. You state that the stadium is owned and operated by a corporation. You have explained that the team pays rent to the corporation and that a long-term lease exists between the team and the corporation. You state that the corporation's board of directors includes members who are appointed by the city's mayor, subject to the approval of city council. You state that some members of the corporation's board of directors are city officials. You state that, upon expiration of a funding tax, the ownership of the stadium will transfer to the county.

In response to the Ethics Commission's request for additional information, you stress that the team is "not doing business with the [city], nor . . . seeking to do business with or for the [city] in any respect. . . . The manner in which they do business is in no way controlled, regulated, or overseen by the [city] or its officials." However, that statement stands in contrast with several facts. First, the city acquired, through its police power of eminent domain, the land upon which the stadium was constructed to serve as the team's long-term home stadium. Next,

some city officials serve in their official capacity as members of the corporation which owns and operates the stadium. You also state that city council, through ordinance, regulates various aspects of the operation of the stadium, including, for example, granting permits for health and food handling and elevator operation. Finally, city council, through ordinance, regulates the hours and location of vending in the stadium.

You state that the team has provided free season tickets to city council members for "many decades." You state that "[t]he City Council members have never, over the many decades, solicited or requested the subject tickets. . . . History shows that these tickets are turned over to the citizens of the [city] in each of the wards, through various methods and means. . . . City Council is merely a conduit, and rarely uses the tickets personally." However, it is evident from your correspondence that city council members use the free season tickets provided to them because you also state, "[w]hen Council members appear at any game, they are doing so in their official capacities, as representatives of the [city], the namesake being represented by the sports team." You state that the free tickets that the city council members receive are neither for seats in a special section of the stadium, nor do they provide the holder with special privileges, such as free parking. You also state that additional free tickets are provided for special occasions.

You state that the market value of each free ticket is \$10.00 and that each city council member receives 2 free tickets per home game. You also state that, generally, the team plays 70 home games, however, in 1994 the team played only 43 home games. By using these figures, in a season in which the team plays 70 home games, each city council member will receive 140 free tickets that will have a cumulative market value of \$1,400.00. In 1994, the team played only 43 home games. Therefore, each city council member received 86 free tickets with a cumulative market value of \$860.00.

Analysis: Substantial and Improper Things of Value

The Ohio Ethics Law and related statutes are general laws establishing a standard of conduct for all citizens who serve as public officials and employees. See Advisory Ops. No. 83-004, 89-013, and 90-001. Within the Ethics Law, Division (E) of Section 102.03 of the Revised Code specifically provides:

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.

The Ethics Commission, in previous advisory opinions, has discussed the purpose and extent of the prohibition imposed upon public officials and employees by R.C. 102.03 (E). This prohibition is similar to the companion restriction contained in R.C. 102.03 (D), which prohibits public officials and employees from using or authorizing the use of the authority or influence of their office to secure anything of value. In discussing this prohibition, the Ethics Commission has held that:

[T]he receipt of something 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 public

official or employee serves is of such character as to manifest a substantial or improper influence upon the public official or employee with respect to his duties, because it could impair his independence of judgement in the performance of his official duties and affect subsequent decisions in matters involving the donor of the thing of value.

Advisory Op. No. 84-010. See also Advisory Ops. No. 86-011 and 90-001.

It must be noted initially that the Ethics Commission has held that R.C. 102.03 (E) prohibits a public official or employee from merely accepting an improper thing of value and does not require that he use the authority or influence of his position to secure it. Advisory Op. No. 90-012. In contrast, R.C. 102.03 (D) prohibits a public official or employee from using the authority or influence of his official position to secure anything of value, if the thing of value is of an improper character. Since you state that "[t]he City Council members have never, over the many decades, solicited or requested the subject tickets" (emphasis added), this advisory opinion will only address the prohibition imposed by R.C. 102.03 (E).

A "public official or employee" is defined for purposes of R.C. 102.03 to include any person who is elected or appointed to an office of any board, commission, or authority of a city. R.C. 102.01 (B) and (C). A member of city council is a "public official or employee" as defined for purposes of R.C. 102.03, and is, therefore, subject to the prohibitions of R.C. 102.03 (E). Advisory Op. No. 87-009.

The term "anything of value" is defined for purposes of R.C. 102.03 in R.C. 1.03 to include money and every other thing of value. R.C. 1.03, 102.01 (G). The Ethics Commission has held that gifts, gratuities, loans, and discounts constitute things of value for purposes of R.C. 102.03. Advisory Ops. No. 86-003, 91-010, and 92-015. See also Advisory Ops. 79-002, 79-006, 80-004, and 86-011 (addressing consulting fees, honoraria, conference registration fees, and travel, meal, and lodging expenses, respectively). In the instant situation, free season tickets are things of value for purposes of R.C. 102.03 (E).

The Ethics Commission has held that, in order for R.C. 102.03 (E) to prohibit a public official from accepting a thing of value, the thing of value must be substantial. Advisory Ops. No. 90-001, 92-014, and 92-015. See also Advisory Ops. No. 75-014 and 76-005 (the word "substantial" means "of or having substance, real, actual, true, not imaginary; of considerable worth or value; important.") The Commission has held that promotional items of nominal value are generally not considered to be "substantial" for purposes of R.C. 102.03 (E). See, e.g., Advisory Op. No. 92-014 (a tee-shirt given to a public official or employee by a regional transit authority as an incentive to encourage commuter ridesharing is not a substantial thing of value).

As stated above, in a season in which the team plays 70 home games, each city council member will receive 140 free tickets with a cumulative market value of \$1,400.00. In 1994, under the facts described, each city council member received 86 free tickets with a cumulative market value of \$860.00. Therefore, in the instant situation, the market value of the free tickets is clearly substantial. The facts you have described do not present any question but that the thing of value is not de minimis.

Provisions of the Ethics Law, in the protection of the public interest, have been written very broadly to apply to all public officials or employees regardless of their public duties. As such, the Ohio Ethics Commission has long held that a thing of value is considered to be of an improper character for purposes of R.C. 102.03 (E) where the thing of value is secured from a party that is interested in matters before, regulated by, or doing or seeking to do business with the public agency with which the official or employee serves, or where the thing of value could impair the official's or employee's objectivity and independence of judgment with respect to his official actions and decisions for the public agency with which he serves or is employed. Advisory Ops. No. 86-011, 89-006, 90-009, and 90-012. Accordingly, the Ethics Commission has held that R.C. 102.03 (E) prohibits a public official or employee from accepting consulting fees, gifts, gratuities, or discounts from a party that is doing or seeking to do business with, interested in matters before, or regulated by, the official's or employee's public agency. Advisory Ops. No. 79-002, 86-011, and 92-015.

As set forth above, you stress that the team is "not doing business with the [city], nor . . . seeking to do business with or for the [city] in any respect. . . . The manner in which they do business is in no way controlled, regulated, or overseen by the [city] or its officials." It is conceded that the relationship between the city and the team may not be of the same character as that of a vendor who is selling, or seeking to sell, goods or services to the city council. See, e.g., Advisory Op. No. 90-001. In addition, the team is not regulated by city council in the same sense as, for example, the Division of Oil and Gas of the State Department of Natural Resources regulates the oil and gas industry. See, e.g., Advisory Op. No. 92-018.

However, as you state in your correspondence to the Ethics Commission, city council has had, and continues to have through its power of ordinance, authority over the stadium, which is located entirely within the city and its operators, and those who lease or use its premises. The mayor makes appointments to the board of the corporation that operates the stadium, which council must approve. Some of those appointed are city officials serving in their official capacity. The city regulates the operation of the stadium in other ways, such as granting permits for health, food handling, elevator operation, and limiting the hours and location of vending in the stadium.

It is apparent that it is in the team's best financial interest to have those persons responsible for the operation of the stadium to create, within the stadium and in the area of the city immediately surrounding it, an environment conducive to attracting the largest possible number of spectators to home games. It is possible, and even likely, that the team and city council could take different positions regarding the development of policies and standards regarding the operation of the stadium and adjacent areas, either through the passage of ordinances or through approval of the mayor's appointments to the board of directors of the corporation that owns the stadium. As a result, the team is interested in matters before the city council and as such, the acceptance of a substantial thing of value by city council members from the team could affect the objectivity and independence of judgment of city council members in making recommendations or decisions with regard to matters that will bear upon the operation of the stadium. Therefore, R.C. 102.03 (E) prohibits the city council members from accepting free season tickets from the professional athletic team.

Analysis: Donations to the City

The issue remains as to whether the city council members may accept the free tickets if the tickets are, as you state, "turned over to the citizens of the [city], in each of the wards, through various methods and means."

Prior to the enactment of Am. Sub. H.B. 300, 116th Gen.A. (1986) (eff. September 17, 1986), R.C. 102.03 (D) prohibited a public official or employee from using his official position to secure anything of value for himself if the thing of value was of such a character as to manifest a substantial and improper influence upon him with respect to his duties. Am. Sub. H.B. 300 amended R.C. 102.03 (D) to delete the requirement that the thing of value be for the public official or employee himself. Advisory Op. No. 88-005. Am. Sub. H.B. 300 also enacted Divisions (E) and (F) of Section 102.03 of the Revised Code. R.C. 102.03 (E) does not require that a public official or employee solicit or accept a thing of value for himself in order for a violation of that provision to exist. Therefore, the prohibition against city council members receiving a thing of value that could manifest a substantial and improper influence upon them with respect to their duties would not be negated by the city council members accepting the free tickets and transferring the tickets to their constituents, instead of using the free tickets personally.

It is necessary to distinguish the instant situation from situations addressed in advisory opinions that involved a private party's donation of goods or services to a public agency. The Ethics Commission has recognized that R.C. 9.20 enables a public agency, including "a municipal corporation or the legislative authority, a board, or other officers thereof" to accept donations from outside sources. In Advisory Opinion No. 89-002, the Ethics Commission held that R.C. 102.03 does not prohibit private companies that are regulated by a state agency from donating items to that state agency if no public official or employee of the agency benefits personally. Also, in Advisory Opinion No. 92-015, the Ethics Commission held that in light of R.C. 9.20, R.C. 102.03 (F) and 2921.43 (A)(1) do not prohibit a retailer located within a municipality from making a donation to the city police department. However, members of the police department are prohibited from benefitting personally and "the donation must be made for the general accommodations and operation of the city police department." In the instant situation, because a city council member may either use the tickets for his or her personal admission to the games or otherwise dispose of the tickets in his or her individual discretion, the tickets may be, and according to your correspondence, have been personally used by the individual city council member. In accordance with the Ethics Commission's recognition that a municipal corporation, through its public officers, is not prohibited from accepting donations from outside sources provided that no public official or employee of the municipality benefit personally, the team would not be prohibited from donating tickets to the city with the condition that the tickets be used by city residents.

Analysis: Acceptance of Season Tickets in Official Capacity

Your letter, dated June 30, 1994, reads in part, "[w]hen Council members appear at any game, they are doing so in their official capacities, as representatives of the [city], the namesake being represented by the sports team." (Emphasis added.) It is apparent that when city council

members use season tickets to attend home games "in their official capacities," the free tickets are being provided to them for the general performance of their public duties.

In light of this fact, the acceptance of free season tickets by city council members may also implicate the prohibition imposed by R.C. 2921.43 (A), which prohibits a public servant from accepting any compensation, other than that allowed by R.C. 102.03 (G)-(I) or other provision of law, for the general performance of the duties of the public servant's public office, or as a supplement to the public servant's public compensation. The term "compensation," as used in R.C. 2921.43 (A), includes the payment of a public servant's expenses incurred in the performance of his official duties and any supplement to his public compensation. See Advisory Ops. No. 89-013 (travel, meal, and lodging expenses incurred in the performance of official duties) and 92-015 (a 10% discount on purchases that a retailer located within the city offered as a community service acknowledgement and in recognition of public employment).

The Ethics Commission has held that the exceptions to the prohibition of R.C. 2921.43 (A)(1) are inapplicable in situations where the source of the compensation is a party that is interested in matters before, regulated by, or doing or seeking to do business with the official's or employee's public agency. See Advisory Op. No. 90-001 (R.C. 2921.43 prohibits "any party that is regulated by, interested in matters before, or doing or seeking to do business with, a public [agency] from giving . . . expenses to an officer or employee of that . . . agency"). See also Advisory Ops. No. 86-011, 89-013, and 89-014. Also, the Ethics Commission held in Advisory Opinion No. 89-013 that the payment, by outside sources, of expenses to the public servant's public agency rather than to the individual public servant does not alleviate the prohibitions imposed by R.C. 2921.43 (A)(1). In that opinion, the Commission held that to permit outside sources to pay the expenses of public servants through the public servant's public agency "would . . . effectively circumvent the prohibitions of Section 2921.43, and the public policy served thereby." See also Advisory Ops. No. 92-015 and 92-018.

Therefore, in the instant situation, R.C. 2921.43 (A), in addition to R.C. 102.03 (E), prohibits city council members from accepting free season tickets from a professional athletic team that plays its games in a stadium located within the city for the purpose of appearing at games "in their official capacities, as representatives of the [city]." Furthermore, R.C. 2921.43 (A)(1) also prohibits the city council members from accepting free season tickets that are provided through the city clerk's office for the purpose of city council members appearing at games "in their official capacities, as representatives of the [city]."

Conclusion

The Ohio Ethics Laws and related statutes prohibit city council members from accepting free season tickets from a professional athletic team that plays its games in a stadium located within the city even if the city council members may choose to give the free tickets, which they have accepted, to their constituents instead of using the free tickets personally. Finally, it must be stressed that nothing in the Ohio Ethics Laws and related statutes prohibit the professional athletic team from giving free tickets directly to private citizens of the city.

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 (E) of Section 102.03 of the Revised Code prohibits a city council member from accepting free season tickets from a professional athletic team that plays its games in a stadium located within the city where the city council, through ordinance, regulates the operation of the stadium.


Marguerite B. Lehner, Chair
Ohio Ethics Commission