

# *The Supreme Court of Ohio*

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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## **OPINION 2004-6**

Issued August 6, 2004

*[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]*

**SYLLABUS:** A municipal court judge may establish and chair an arts committee to commission an artist and decide upon artwork for the court's historic building. A municipal court judge may collaborate on behalf of the court's arts committee with a public arts foundation, a nonprofit corporation that will fund the artist and the artwork through the fundraising efforts of private citizens. A municipal court judge may accept on behalf of the court a donation of artwork for the court's historic building.

**OPINION:** The opinion addresses questions regarding a judge establishing an arts committee for the court's historic building.

Is it proper for a municipal court judge to establish and chair an arts committee to commission artists and to decide upon artwork for the historic court building?

Is it proper for a municipal court judge to collaborate on behalf of the court's arts committee with a public art foundation, a nonprofit corporation that will fund the artists and artworks through private fundraising efforts?

Is it proper for a municipal court judge to accept, on behalf of the court, a donation of artwork for the historic court building?

A municipal court judge wishes to establish and chair an arts committee for the historic building in which the municipal court resides. The purpose of the arts committee is to decide upon artwork for the court building and to commission artists. Already established in the community is a public arts foundation, a nonprofit corporation, set up to help administer funds for public art around the city's court square. The judge anticipates that interested citizens will raise private funds for the commissioned artists and their artwork and that the public arts foundation will administer the funds to the artists.

### Forming and chairing a court's arts committee

A courthouse is a symbol of justice in a community. From the courthouse, a judge administers justice, often with profound impact upon individuals and

society. A judge's formation and leadership on a committee supporting artwork for a historic building housing the court is an activity that enhances the law, the legal system, and the administration of justice. Under Canon 2, "[a] judge may engage in activities to improve the law, the legal system, and the administration of justice, provided those activities do not cast doubt on the judge's capacity to act impartially as a judge, demean the judicial office, or interfere with the proper performance of judicial duties."

A judge's chairing of the art committee for the court's historic building would not cast doubt on the judge's ability to act impartially, would not demean the judicial duties, and would not (unless the committee meetings were excessive) interfere with the proper performance of judicial duties.

Collaboration on behalf of a court's arts committee with a public art foundation, a nonprofit corporation

As chair of the arts committee, a judge would collaborate on behalf of the court's arts committee with the public arts foundation, a nonprofit corporation, on plans for funding the artists and artwork through private fundraising efforts of citizens.

Canon 2(B)(2)(a) prohibits a judge's personal participation in the solicitation of funds or other fund-raising activities, but allows that a "judge may assist an organization in planning fundraising and may participate in the management and investment of the organization's funds." Canon 2(B)(2)(b) states that a "judge may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system, or the administration of justice."

A judge's collaboration on behalf of the court's arts committee with the public arts foundation, a nonprofit corporation, as to the court's art projects is proper because it is a planning and recommending activity not a personal participation in the solicitation of funds by the judge.

Accepting a donation of artwork to the court

Both the Ohio Code of Judicial Conduct and Ohio Ethics Law are pertinent to the Board's consideration of whether a judge may accept a donation on behalf of the court.

Canon 2(C)(5) of Ohio Code of Judicial Conduct restricting gifts to judges is not applicable herein. The artwork is a donation to the court: It is not a gift to an individual judge or judicial employee. Although the judges and judicial employees may (or may not) enjoy the beauty of the artwork, it is not given as a gift for their personal use.

Canon 3(C) is applicable, because acceptance of a donation of artwork to a court requires the exercise of a judge's administrative duties. Canon 3(C)(1) requires that the discharge of administrative duties be diligent and without bias or prejudice. As part of making a diligent decision about acceptance of a donation, a judge must consider whether there is a need for the donated items.

Canon 2 is also applicable. A judge must consider the requirements of Canon 2 that "[a] judge shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." A judge's decision to accept a donation on behalf of a court must be made with due consideration for the perception it may create to the public. Offers of great generosity and magnitude may create appearances of partiality and impropriety.

In addition, a judge must consider DR 8-101(A)(3) of the Ohio Code of Professional Responsibility: a lawyer who holds public office is not permitted to "[a]ccept any thing of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing his [her] action as a public official." Judges are lawyers and are subject to the Ohio Code of Professional Responsibility. See Gov.Jud R. I §1. A judge must consider whether a proposed donation is an attempt to influence the judge. If a judge knows that the purpose of a donation is to influence judicial actions, the judge must not accept the donation.

Though a donation of artwork through a nonprofit public arts foundation to a court for the courthouse building may be generous, it is unlikely to interfere with or influence the discharge of judicial duties and therefore does not create an appearance of impropriety.

Under the facts presented, it is the Board's view that a judge does not violate the Ohio Code of Judicial Conduct by accepting a donation of artwork from a public arts foundation for a historic court building, so long as the judge's decision to accept the artwork is made diligently without bias or prejudice, so long as the offer is not an attempt to influence the judge and does not interfere with or influence the discharge of judicial duties, and so long as acceptance of the donation complies with Ohio Ethics Law.

Ohio Ethics Law is set forth in Chapter 102 and related statutes Sections 2921.01, 2921.42, 2921.421, and 2921.43 of the Ohio Revised Code. The Board of Commissioners on Grievances and Discipline is the appropriate ethics commission to render advice on Ohio Ethics Law for matters relating to judicial officers and employees. See Ohio Rev.Code Ann §102.01(F)(2) (West 2002) and §102.08 (West 2002). For purposes of Ohio Ethics law, judicial officers and judicial employees are "public officials and employees" and courts are "public agencies." Ohio Rev.Code Ann. §102.01(B), (C) (West 2002).

Pertinent to this opinion is Section 102.03 of the Ohio Revised Code, prohibiting misuse of public office to secure a thing of value that manifests a substantial and improper influence with respect to official duties.

Section 102.03

(D) No public official or employee shall use or authorize the use of the authority or influence of 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 the public official or employee with respect to that person's 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 the public official or employee with respect to that person's 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 the public official or employee with respect to that person's duties.

Ohio Rev.Code Ann. §102.03 (D), (E), (F) (West 2002).

To invoke the restrictions of Section 102.03(D), (E), and (F): 1) there must be a thing of value; and 2) the thing of value must be of such a character as to manifest a substantial and improper influence with respect to official duties.

What is "anything of value?" "Anything of value" includes among other things, money, goods, chattels, any interest in realty, a promise of future employment, and every other thing of value. Ohio Rev.Code Ann §1.03 (West 2004) and §102.01(G) (West 2002).

What is a "substantial and improper influence?" A thing of value that is more than nominal or de minimis is a "substantial" influence. A thing of value from a party interested in matters before, regulated by, or doing or seeking to do business with the public agency is considered an "improper" influence.

As interpreted by the Ohio Ethics Commission in Opinion 89-002, R.C. 102.03 is not applicable when the thing of value goes to a public agency as opposed to an individual.

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) prohibits 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.

Ohio Ethics Commission, Op. 89-002 (1989) (permitting private companies to donate 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).

This Board agrees. Donations of things of value to a court are distinct from donation of things of value to individual judicial officers and employees, and are not prohibited by Section 102.03.

The facts addressed herein—donations of artwork to a court—are distinct from the facts addressed by the Board of Commissioners on Grievances and Discipline in Opinions 95-4 and 92-14. At issue in Opinion 95-4 was an offer of entire volumes of the Ohio Revised Code to individual justices and judges. At issue in Opinion 92-14 was financial and other support to a magistrate association to provide individual referees and magistrates with low registration fees, free meals, and free recreational activities. In Op. 95-4 the Board advised that a complimentary offer of the entire revised code for each justice and judge in Ohio from a publisher affiliated with the court's official publisher and doing business with the court is improper. Under Section 102.03(D) and (E), the offer is a thing of value of such a character as to manifest a substantial or improper upon a justice or judge with respect to their official duties. Under the Ohio Code of Judicial Conduct, the offer was of such generosity and magnitude as to create an appearance of impropriety. See Ohio SupCt, Bd Comm'rs Grievances & Discipline, Op. 95-4 (1995). In Opinion 92-14, the Board advised it is improper under Section 102.03 (D) and (E), Canon 2(B), DR 8-101(A)(3), and DR 5(B)(3) for referees and magistrates who are members of a statewide association of court referees and magistrates to solicit, accept, or use the authority of office to secure financial or other support, from a law firm or from a business or an individual interested in matters before, regulated by, or doing or seeking to do business with the courts in which the referees or magistrates serve, in order to provide low registration fees, hospitality rooms, free meals, and free recreational activities for the referees, magistrates and spouses attending the annual educational meeting of the association. Ohio SupCt, Board of Comm'rs on Grievances & Discipline, Op. 92-14 (1992).

## Conclusion

Under the facts presented, there is no bar under the Ohio Code of Judicial Conduct or Ohio Ethics Law to a judge accepting donations of artwork to the court's historic building. The donation is to the court, not to an individual judge or court employee. There is no personal benefit to the judge or to the court

employees. The donation does not appear to be an attempt to influence the judge. The donation is voluntary. It is unlikely that the donation of artwork would cause public perception of a conflict for the court, its officers, and employees.

Thus, the Board advises as follows. A municipal court judge may establish and chair an arts committee to commission an artist and decide upon artwork for the court's historic building. A municipal court judge may collaborate on behalf of the court's arts committee with a public arts foundation, a nonprofit corporation that will fund the artist and the artwork through the fundraising efforts of private citizens. A municipal court judge may accept on behalf of the court a donation of artwork for the court's historic building.

**This is an informal, non-binding advisory opinion, based upon the facts presented and limited to questions arising under the Code of Judicial Conduct, Ohio Ethics Law and related statutes. Pursuant to Section 102.08 of the Ohio Revised Code, the requester may reasonably rely on the opinion as it applies to Ohio Ethics Law and related statutes.**