

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 95-4

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[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]

[Not Current- subsequent rule amendments to Canons 1 through 6, Ohio Code of Judicial Conduct, eff. May 1, 1997]

SYLLABUS: It is improper under Ohio Ethics Law, Divisions (D) and (E) of Section 102.03 of the Ohio Revised Code, for a court, a justice, or a judge to accept a complimentary offer of casebound editions of the entire revised code for each justice and judge from a publisher that does business with the court and is an affiliate of the court's official publisher. Under Ohio Ethics Law, the offer is a thing of value that is of such a character as to manifest a substantial or improper influence upon the justice or judge in connection with official duties. In addition, under the Ohio Code of Judicial Conduct, an offer of such generosity and magnitude may create an appearance of impropriety.

It is not per se improper under the Ohio Code of Judicial Conduct or Ohio Ethics Law, Divisions (D) and (E) of Section 102.03 of the Ohio Revised Code, for a justice or judge to accept on occasion a complimentary book from a publisher, even one that does business with the court. An occasional acceptance of books from a publisher, even one that does business in the court, can be distinguished from a year's free use of the entire revised code. An occasional offer of a complimentary book is an industry standard and is de minimus.

It is not improper under the Ohio Code of Judicial Conduct or Ohio Ethics Law for a justice or judge to accept law books at the same price or on the same terms as the publisher provides for all lawyers in Ohio.

OPINION: This opinion addresses questions regarding the acceptance of a publishing company's offer of books to judicial officers.

1. Is it proper under the Ohio Code of Judicial Conduct or Ohio Ethics Law, Divisions (D) and (E) of Section 102.03 of the Ohio Revised Code, for a court, a justice, or a judge to accept complimentary use for one year of books from a publisher?
2. Is it proper under the Ohio Code of Judicial Conduct or Ohio Ethics Law for a justice or judge to accept law books at the same price or on the same terms as the publisher provides for all lawyers in Ohio?

By way of background, the publishing company is an affiliate of the company that is the official publisher for the Supreme Court of Ohio. The books being offered for complimentary use are entire volumes of the new casebound edition of the revised code.

Under the Ohio-Code of Judicial Conduct, judges are permitted by Canon 5(C) (4) (a) to accept "books supplied by publishers on a complimentary basis for official use." To date, this Board has never advised upon the interpretation of this Canon.

Judges are also governed by statutory ethics law. Justices and judges are "public officials" subject to the prohibitions of Ohio Ethics Law, Chapter 102 of the Revised Code and related statutes. See Ohio Rev. Code Ann §102.01(B). Under Ohio Ethics Law there are restrictions on accepting things of value. Pertinent to this opinion are the restrictions set forth in Section 102.03 (D), (E), and (F).

(D) No public official or employee shall use or authorize the use of the authority or influence of his [her] 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 [her] with respect to his [her] 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 [her] with respect to his [her] 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 [her] with respect to his [her] duties.

To answer the questions raised, Canon 5C (4) (a) and Revised Code Sections 102.03 (D) and (E) must be harmonized. Under Canon 5C (4) (a) complimentary books from publishers may be accepted. But, under Revised Code 102.03 (D) and (E) the books may not be accepted if considered as "anything of value that is of such a character as to manifest a substantial and improper influence upon him [her] with respect to his [her] duties."

Thus, the issue becomes whether a complimentary set of a new casebound edition of the entire Ohio Revised Code donated by a publishing company to Justices of the Supreme Court of Ohio and to Ohio judges for their use would be anything of value of such a character as to manifest a substantial and improper influence upon the officials with respect to their duties.

The term "anything of value" is broadly defined by statute to include, inter alia, money, goods, chattels, and every other thing of value. See Oh. Rev. Code Ann. §102.01(G) and §1.03 (Baldwin 1994). Under this broad definition, an entire set of the revised code are clearly "anything of value" for purposes of Section 102.03 of the Revised Code.

If a thing of value is more than nominal or de minimus it is considered a substantial influence. If a thing of value is from a party that is interested in matters before, regulated by, or doing or seeking to do business with the public official's or employees' agency then it is considered an improper influence. See Ohio SupCt, Bd of Comm'rs on Grievances and Discipline, Ops. 92-18 (1992), 92-14 (1992); Ohio Ethics Comm'n, Ops. 89-014 (1989), 89-002 (1989), 86-011(1986), 84-010 (1984), 80-004 (1980), 79-006 (1979), 79-002(1979).

In summary, the standard under Revised Code Sections 102.03 (D) and (E) is that if "anything of value" is more than nominal or de minimus and comes 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, it is considered to be of such a character as to manifest a substantial and improper influence upon officials with respect to their duties. The Ohio Ethics Commission has applied the standard in different contexts: 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; and where the thing of value would be given directly to the public official or employee, but in connection with his or her official position, and under circumstances that would directly or indirectly benefit his or her public agency. See Ohio Ethics Commission, Op. 89-002 (1989).

Under the facts presented, the revised code is the "anything of value." It would be given to justices or judges, in connection with their official position, under circumstances that would benefit the court. The benefit would be that the convenience would facilitate research on court opinions.

One facet of the ethical problem is that the entire revised code is more than de minimus. The other facet of the ethical problem is the source of the gift. Since the publisher sells other books to the court and is an affiliate of the court's official publisher, the publishing company is a party doing or seeking to do business with the court. To accept casebound editions of the entire revised code for each justice and judge from a publisher that does business with the court, would be to ignore the intent of the restrictions within Ohio Ethics Law. In addition, to accept casebound editions of the entire revised code for each justice and judge from a publisher that does business with the court, would be to ignore the mandate of Canon 2 of the Code of Judicial Conduct to avoid even the appearance of impropriety.

The restrictions within Ohio Ethics Law, however, do not make Canon 5C (4) (a) inoperative. An occasional acceptance of books from a publisher, even one that does business in the court can be distinguished from a year's free use of the entire revised code. Justices and judges must use their discretion. An offer that seems too good to be true, usually is. An occasional offer of a complimentary book is an industry standard and is de minimus.

Thus, in answer to Question One, this Board advises that it is improper under Ohio Ethics Law, Divisions (D) and (E) of Section 102.03 of the Ohio Revised Code, for a court, a justice, or a judge to accept a complimentary offer of casebound editions of the entire revised code for each justice and judge from a publisher that does business with the court and is an affiliate of the court's official publisher. Under Ohio Ethics Law, the offer is a thing of value that is of such a character as to manifest a substantial or improper influence upon the justice or judge in connection with official duties. In addition, under the Ohio Code of Judicial Conduct, an offer of such generosity and magnitude may create an appearance of impropriety.

It is not per se improper under the Ohio Code of Judicial Conduct or Ohio Ethics Law, specifically Divisions (D) and (E) of Section 102.03 of the Ohio Revised Code, for a justice or judge to accept on occasion a complimentary book from a publisher, even one that does business with the court. An occasional acceptance of books from a publisher, even one that does business in the court, can be distinguished from a year's free use of the entire revised code. An occasional offer of a complimentary book is an industry standard and is de minimus.

In answer to Question Two, the Board advises that it is not improper under the Ohio Code of Judicial Conduct or Ohio Ethics Law for a justice or judge to receive law books at the same price or on the same terms as the publisher provides for all lawyers in Ohio. Such offer does not carry any special favor to the justices, judges, or the court. The offer is available to all lawyers in Ohio. Thus, the Board can find no ethical basis for reaching another conclusion with respect to this question.

Advisory opinions of the Board of Commissioners on Grievances and Discipline are informal, nonbinding opinions in response to prospective or hypothetical questions regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio, the Supreme Court Rules for the Government of the Judiciary, the Code of Professional Responsibility, the Code of Judicial Conduct, and the Attorney's Oath of Office. 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.