

The Supreme Court of Ohio

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OPINION 98-10

Issued October 9, 1998

[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]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: Gifts to judges are regulated under both the Ohio Code of Judicial Conduct and Ohio Ethics Law. An honorary country club membership, a round of golf, and a ticket to a sports event are acceptable gifts under both authorities only if certain conditions are met.

Under Canon 2(C)(5)(h) of the Ohio Code of Judicial Conduct, a judge may accept an honorary country club membership as a gift provided that the donor country club is not a party who has come or is likely to come before the judge or whose interests have come or are likely to come before the judge. Pursuant to Canon 2(C)(5)(h) and Canon 2(D)(3), acceptance of an honorary country club membership with a value exceeding \$150.00 should be reported as a gift on the annual Quasi-judicial or Extra-judicial Activity Compensation Report Form for Judges. Under Canon 4(B), a judge may not hold membership in a country club that practices invidious discrimination.

Under Ohio Ethics Law, R.C. § 102.03(E), a judge may accept an honorary country club membership provided the donor country club is not interested in matters before, regulated by, or doing or seeking to do business with the judge or the court on which the judge serves. Under R.C. § 102.02(A)(7), acceptance of an honorary country club membership with a value of over \$75.00 should be reported as a gift on the annual Financial Disclosure Statement.

Under Canon 2(C)(5)(c) of the Ohio Code of Judicial Conduct, a judge may accept as “ordinary social hospitality” an occasional round of golf or a ticket to a sports event from an attorney. Acceptance of a round of golf or a ticket to a sports event is not reported on the annual Quasi-judicial or Extra-judicial Activity Compensation Report Form for Judges, but is reported under R.C. § 102.02(A)(7) as a gift on the annual Financial Disclosure Statement if the value exceeds \$75.00.

Under Ohio Ethics Law, R.C. § 102.03(E), a judge may accept a round of golf or a ticket to a sports event from an attorney, provided the attorney does not have a case currently pending before the judge or other interests that are before the judge. Under R.C. § 102.02(A)(7), acceptance of a round of golf or a ticket to a sports event with a value exceeding \$75.00 should be reported as a gift on the annual Financial Disclosure Statement.

In reporting gifts, a judge should value each gift at or above its minimum fair market value. The value of multiple gifts from one donor is to be totaled for the year. If the total value of the gifts from one donor exceeds \$150 then the reporting threshold within the Ohio Code of Judicial Conduct is met. If the total value of the gifts from one donor exceeds \$75.00 then the reporting threshold within Ohio Ethics Law is met.

Opinion: This opinion addresses the following questions regarding gifts to judges.

Is it proper for a judge to accept an honorary membership to a country club and if so must the judge report it as a gift?

Is it proper for a judge to accept a round of golf or a ticket to a sports event from an attorney and if so must the judge report it as a gift?

What is the proper method of determining the value of gifts for reporting purposes?

Introduction

Both the Ohio Code of Judicial Conduct and Ohio Ethics Law regulate gifts to judges and both have reporting requirements. These authorities guide a judge in determining what gifts may be accepted and what gifts must be reported.

The Ohio Code of Judicial Conduct regulates gifts by prohibiting a judge from accepting gifts from anyone, unless the gifts fall within one of the eight categories of exceptions in Canon 2(C)(5)(a) through (h).

Canon 2(C)(5) A judge shall not accept and shall urge members of the judge's family residing in the judge's household not to accept a gift, bequest, favor, or loan from anyone except for:

- (a) A gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system, or the administration of justice;
- (b) A gift, award, or benefit incident to the business, profession, or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards, and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award, or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

- (c) Ordinary social hospitality;
- (d) A gift from a relative or friend for a special occasion such as a wedding, anniversary, or birthday if the gift is commensurate with the occasion and the relationship;
- (e) A gift, bequest, favor, or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Canon 3(E);
- (f) A loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;
- (g) A scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or
- (h) Any other gift, bequest, favor, or loan, only if the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge, and, if its value exceeds one hundred fifty dollars, the judge reports it in the same manner as the judge reports compensation in division (D) of this canon.

Gifts accepted under Canon 2(C)(5)(h) and with a value of over \$150.00 must be reported under the Code of Judicial Conduct in the same manner as compensation is reported under Canon 2(D)(3). The nature of the gift, the name of the donor, and the amount are reported on the annual Quasi-judicial or Extra-judicial Activity Compensation Report Form for Judges. Gifts accepted under Canon 2(C)(a) through (g) have no reporting requirement under the Code of Judicial Conduct; however, many of these gifts will fall within the reporting requirements of Ohio Ethics Law.

Ohio Ethics Law regulates gifts by prohibiting judges from accepting anything of value that is of such a character as to manifest a substantial and improper influence upon the judge.

R.C. 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.

R.C. § 102.02 (A)(7) requires that a judge file a statement disclosing "the source of each gift of over seventy-five dollars . . . received by the person in the person's own name or by any other person for the person's use or benefit during the preceding calendar year, except gifts received by will or by virtue of section 2105.06 of the Revised Code, or received from spouses, parents, grandparents, children, grandchildren, siblings, nephews, nieces, uncles, aunts, brothers-in-law, sisters-in-law, sons-in-law, daughters-in-law, fathers-in-law, mothers-in-law, or any person to whom the person filing the statement stands in loco parentis, or received by way of distribution from any inter vivos or testamentary trust established by a spouse or by an ancestor." The source of the gift must be reported on the annual Financial Disclosure Statement, but not the nature of the gift.

In addition, Ohio Ethics Law prohibits a judge from accepting supplemental compensation for performing the duties of the judicial employment.

R.C. 2921.43(A) No public servant shall knowingly solicit or accept and no person shall knowingly promise or give to a public servant either of the following:

- (1) Any compensation other than as allowed by divisions (G), (H), and (I) of section 102.03 of the Revised Code or other provisions of law, to perform his [her] official duties, to perform any other act or service in the public servant's public capacity, for the general performance of the duties of the public servant's public office or public employment, or as a supplement to the public servant's public compensation;
- (2) Additional or greater fees or costs than are allowed by law to perform his [her] official duties.

A gift that is intended as supplemental compensation for performing judicial duties would be prohibited. However, that issue is not raised with regard to the questions presented and is not further addressed in this opinion.

Question One

Is it proper for a judge to accept an honorary membership to a country club and if so must the judge report it as a gift?

The answer to the question requires analysis under both the Ohio Code of Judicial Conduct and Ohio Ethics Law. Is an honorary membership to a country club a prohibited gift under the Ohio Code of Judicial Conduct? Is the membership prohibited under Ohio Ethics Law?

The precise benefits of an honorary country club membership need not be scrutinized. An honorary membership to a country club allows a judge access to a private country club. Whether the membership provides only dining privileges at the club, or whether it also includes full or limited golf, tennis, swimming, or other social or recreational privileges is superfluous. Honorary admittance to a country club is in and of itself a generous bestowal upon the recipient. It is a valuable gift.

To be an acceptable gift under the Ohio Code of Judicial Conduct, an honorary country club membership must fall within one of the eight permitted categories in Canon 2(C)(5)(a) through (h). One of the categories, Canon 2(C)(5)(c), permits a judge to accept “ordinary social hospitality.”

Ordinary social hospitality is not defined within the Code of Judicial Conduct, but in common usage, “hospitality” means a “[c]ordial reception of guests” or “[a]n instance of being hospitable.” *Webster’s II New Riverside University Dictionary* 593 (1984). To be “hospitable” means to be “[c]ordial and generous to guests.” *Id.*

In this Board’s view an honorary membership in a country club is not “ordinary social hospitality.” A country club membership is more than “ordinary social hospitality.” It is more than an “instance of being hospitable.” Membership in a country club provides continuous benefits throughout the year.

An honorary country club membership does not fit within any of the other permitted categories identified in (a) through (g). Therefore, it is an unacceptable gift unless it fits within the “catchall” category (h). Under Canon 2(C)(5)(h), gifts that fall outside categories (a) through (g) are acceptable if the gift does not come from a donor who is a party or a person who has come or is likely to come or whose interests have come or are likely to come before the judge.

When considering the acceptance of gifts under Canon 2(C)(5)(h) a judge should use both caution and common sense. A judge should not accept a Canon (2)(C)(5)(h) gift from a current or former litigant or from an attorney who currently represents clients in matters before the judge, or from any other person whose interests have come or are likely to come before the judge. Acceptance of a Canon (2)(C)(5)(h) gift from such persons would not preserve the integrity and independence of the judiciary as required under Canon 1 and would not promote public confidence in the integrity and impartiality of the judiciary

as required under Canon 2. However, a vague possibility that a donor of a gift might at some future point in time come before a judge is not a sufficient reason to restrict acceptance of an otherwise acceptable gift. If a judge accepts a gift and the donor later becomes a litigant, the judge would need to consider disqualification under Canon 3(E) from presiding over the case to avoid an appearance of partiality and impropriety.

In general, judges should be wary of gifts and should exercise prudence when determining whether a gift is acceptable. There may be some gifts of such magnitude or nature that acceptance by a judge would diminish the integrity of the judiciary. Any gift which has the appearance of currying influence with a judge or which casts doubt upon a judge's integrity under Canon 1 or a judge's independence under Canon 2 is inappropriate for a judge to accept.

A judge should give careful consideration before accepting a gift from a partner or associate of an attorney who has a case pending before the judge. If the judge knows or it is obvious that the gift is being offered for the purpose of influencing the judge, then the gift should not be accepted. If the gift is truly based on social hospitality and is not an attempt to influence the case, then acceptance would not be improper. These are, in part, subjective decisions which the judge must make prudently.

With some gifts, additional considerations may arise. As to a country club membership, a judge, before accepting or joining, would need to assure himself or herself that the organization does not practice invidious discrimination. Under Canon 4(B), "[a] judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, gender, religion, or national origin."

Thus, the Board advises that under Canon 2(C)(5)(h) of the Ohio Code of Judicial Conduct, a judge may accept an honorary country club membership as a gift provided that the donor country club is not a party who has come or is likely to come before the judge or whose interests have come or are likely to come before the judge. Pursuant to Canon 2(C)(5)(h) and Canon 2(D)(3), acceptance of an honorary country club membership with a value exceeding \$150.00 should be reported as a gift on the annual Quasi-judicial or Extra-judicial Activity Compensation Report Form for Judges. Under Canon 4(B), a judge may not hold membership in a country club that practices invidious discrimination.

As to Ohio Ethics Law, the honorary country club membership would be prohibited if it is considered to be "anything of value" that is of such a character as to manifest a "substantial influence" and "improper influence" upon the judge with respect to the judge's duties. Acceptance is improper in the presence of all three variables: 1) a thing of value, 2) substantial influence, and 3) improper influence. "Anything of value" is broadly defined by R.C. § 1.03 to include, *inter alia*, money, goods and chattels, realty, and every other thing of value. There is substantial influence if the thing of value is more than de minimis. There is improper influence if the thing of value is from a party that is

interested in matters before, regulated by, or doing or seeking to business with the public official's or employee's agency. *See* Ohio Sup.Ct, Bd of Comm'rs Griev. & Disc, Ops. 95-8 (1995), 95-4 (1995)

An honorary membership to a country club is a thing of value. Because it is more than de minimis it is of such a character as to manifest a substantial influence. However, it is assumed for purposes of this opinion that the country club is not interested in matters before, regulated by, or doing or seeking to do business with the judge or the court on which the judge serves. Thus, it is not considered to be such a character as to manifest an improper influence.

Thus, the Board advises that under Ohio Ethics Law, R.C. § 102.03(E), a judge may accept an honorary country club membership provided the donor country club is not interested in matters before, regulated by, or doing or seeking to do business with the judge or the court on which the judge serves. Under R.C. § 102.02(A)(7), acceptance of an honorary country club membership with a value of over \$75.00 should be reported as a gift on the annual Financial Disclosure Statement.

Question Two

Is it proper for a judge to accept a round of golf or a ticket to a sports event from an attorney and if so must the judge report it as a gift?

The answer to the question requires analysis under both the Ohio Code of Judicial Conduct and Ohio Ethics law. Is a round of golf or a ticket to a sports event given by a lawyer to a judge a prohibited gift under the Ohio Code of Judicial Conduct? Is a round of golf or a ticket to a sports event from a lawyer to a judge prohibited under Ohio Ethics Law?

To be an acceptable gift, under the Code of Judicial Conduct, a round of golf or a ticket to a sports event must fall within one of the eight categories set forth in Canon 2(C)(5)(a) through (h). One of these eight categories, Canon 2(C)(5)(c), permits a judge to accept "ordinary social hospitality." As stated in discussion of Question One, ordinary social hospitality is not defined within the Code of Judicial Conduct, but in common usage, "hospitality" means a "[c]ordial reception of guests" or "[a]n instance of being hospitable" and to be "hospitable" means to be "[c]ordial and generous to guests." *Webster's II New Riverside University Dictionary*, 593 (1984).

The *Reporter's Notes to the Code of Judicial Conduct* explain the decision of the ABA Special Committee on Standards of Judicial Conduct to include the standard of "ordinary social hospitality" in the ABA Code of Judicial Conduct which was adopted by the House of Delegates of the American Bar Association on August 16, 1972.

The “social hospitality” issue proved to be difficult. Should a judge be precluded from going to a party given by a lawyer because the food and drink is a gift or favor. Such questions could be continued in gradations of gifts ranging from a cigar to a month’s visit at a mountain cabin. The committee opted for a standard of “ordinary social hospitality.” The judge should not be excluded from all social relationships with lawyers or persons who are likely to be litigants in his court. The scope of permissible hospitality will vary somewhat from place to place, depending on local customs and practices. The Committee felt that there are common sense limits and that the standard is understandable and defensible; for example, the offer to a judge of a month at the mountain cabin of a lawyer friend who practices in the judge’s court is clearly not ordinary social hospitality, and acceptance is prohibited. Persons who think that the “ordinary social hospitality” test sets too relaxed a standard should keep in mind that the “impropriety and the appearance of impropriety” provisions of Canon 2 are applicable to all of a judge’s activities. Each activity must be judged in light of the surrounding circumstances.

E.Wayne Thode, *Reporter’s Notes to the Code of Judicial Conduct* 84-85 (1973).

Playing golf and attending sports events are popular social activities with widespread appeal. Many sports enthusiasts as well as crowd watchers enjoy viewing a sport in the company of others. Because of the popularity of these events, it is common for individuals to extend invitations to play golf or to go to a game.

In the Board’s view, invitations to play golf or to attend a sports event are a gesture of social hospitality that a judge may accept under Canon 2(C)(5)(c). Thus, the Board advises that under Canon 2(C)(5)(c) of the Ohio Code of Judicial Conduct, a judge may accept as “ordinary social hospitality” an occasional round of golf or a ticket to a sports event from an attorney. Acceptance of a round of golf or a ticket to a sports event is not reported on the annual Quasi-judicial or Extra-judicial Activity Compensation Report Form for Judges, but is reported under R.C. § 102.02(A)(7) as a gift on the annual Financial Disclosure Statement if the value exceeds \$75.00.

As to Ohio Ethics Law, a round of golf or a ticket to a sports event is prohibited if it is considered “anything of value” that is of such a character as to manifest a “substantial influence” and “improper influence” upon the judge with respect to the judge’s duties. Acceptance is improper in the presence of all three variables: 1) a thing of value, 2) substantial influence, and 3) improper influence. “Anything of value” is broadly defined by R.C. § 1.03 to include, *inter alia*, money, goods and chattels, realty, and every other thing of value. Substantial influence is present if the thing of value is more than de minimis. Improper influence is present if the thing of value is from a party that is interested in matters before, regulated by, or doing or seeking to business with the public

official's or employee's agency. See Ohio Sup.Ct, Bd of Comm'rs on Griev. & Disc, Ops. 95-8 (1995), 95-4(1995).

Of related interest is Opinion 95-001 in which the Ohio Ethics Commission advised that "[d]ivision (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." The tickets were considered a thing of value. The season tickets were considered substantial not de minimis. The team was considered interested in matters before the city council. The commission noted that the city council has, through its power of ordinance, authority over the stadium; the mayor makes appointments and the council approves the appointments to the board of the corporation that operates the stadium; and the council regulates the operation of the stadium. See Ohio Ethics Comm., Op. 95-001 (1995).

In this Board's view, a round of golf and a ticket to a sports event are "things of value." The value of a round of golf or a ticket to a sports event in most instances would be "substantial" not de minimis. An attorney who has a case currently pending before the judge is considered interested in matters before the court on which the judge serves. Therefore, if an offer to a judge comes from an attorney who has a case currently pending before the judge or other interests that are before the judge, the offer would be of such a character as to manifest improper influence. The offer would be acceptable from an attorney who does not have a case currently pending before the judge or other interests before the judge.

Thus, Board advises that under Ohio Ethics Law, R.C § 102.03(E), a judge may accept a round of golf or a ticket to a sports event from an attorney, provided the attorney does not have a case currently pending before the judge or other interests before the judge. Under R.C. § 102.02(A)(7), acceptance of a round of golf or a ticket to a sports event with a value exceeding \$75.00 should be reported as a gift on the annual Financial Disclosure Statement.

Question Three

What is the proper method of determining the value of gifts for reporting purposes?

In reporting gifts, a judge should value each gift at or above its minimum fair market value. See Ohio Ethics Comm'n, Op. 96-003 (1996). The value of multiple gifts from one donor is to be totaled for the year. See Ohio Ethics Comm'n., Op. 94-003 (1994). If the total value of the gifts from one donor exceeds \$150 then the reporting requirement within the Ohio Code of Judicial Conduct is met. If the total value of gifts from one donor exceeds \$75.00 then the reporting threshold within Ohio Ethics Law is met.

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.