

# *The Supreme Court of Ohio*

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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## **OPINION 2004-5** 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*[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]*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:** Under the Ohio Code of Judicial Conduct, a municipal court judge should not accept a donation of ten carbines to a court's probation department for use in court security. Court security should not be an afterthought fortuitously met through a generous donation from a company that may in the future do business with the court or have an interest in the judge's rulings in firearms cases. A donation of carbines to a court creates an appearance of impropriety that the court's security is haphazard or that a firearms company is attempting to influence the court. If carbines are necessary to court security, the court should purchase the carbines.

**OPINION:** The opinion addresses a question regarding a judge accepting a donation of carbines to the court's probation department for use in court security.

Is it proper for a judge of a municipal court to authorize the acceptance of a donation of ten carbines from a firearms company to the probation department for use in court security?

A firearms company wants to donate ten carbines to a court's probation department. The donated carbines are for use in court security by probation officers, bailiffs, and court security staff, but not for any other use. The firearms company is not asking for anything in return for the donation. The company has never done business with the court. The court purchases guns infrequently, on as needed basis, but has never purchased guns from this firearms company.

The Ohio Code of Judicial Conduct and Ohio Ethics Law govern the issue. 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). The Board is the advisory body for rendering advice on the application of the Ohio Code of Judicial Conduct. See Gov.Bar R. V §(2)(C).

## Ohio Code of Judicial Conduct

Canon 2(C)(5) of the Ohio Code of Judicial Conduct restricts gifts to judges, but is not applicable herein. The carbines are a donation to the court's probation department. The carbines are not a gift to a judge. The carbines are not for the judge's personal use or for personal use by any court employee.

Canon 3(C) is applicable because acceptance of a donation of carbines 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, a judge should consider whether there is an actual need for the carbines.

Canon 2 is also applicable. A judge should 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 a 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. Gov.Jud R. I §1. A judge must consider whether a 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.

An offer of ten carbines is generous and unusual. A judge must question why a firearms company wants to donate ten carbines to the court. Is it to put the company in a position to influence future purchases of firearms from the company? Is the donation an attempt to influence the judge with regard to cases involving firearms? What will be the public perception of such donation? If the firearms are necessary for court security, why has not the court already purchased such items to protect the court, its employees, and the public? On its face, the offer creates an appearance of impropriety.

Thus, the Board's view as to the facts presented is as follows. Under the Ohio Code of Judicial Conduct, a judge should not accept a donation of ten carbines to a court's probation department for use in court security. Court security should not be an afterthought fortuitously met through a generous donation from a company that may in the future do business with the court, or have an interest in the judge's rulings in firearms cases. A donation of carbines to a court creates an appearance of impropriety that the court's security is haphazard or that a

firearms company is attempting to influence the court. If carbines are necessary to court security, the court should purchase the carbines.

## 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. 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. See e.g., Ohio SupCt, Bd Comm’rs on Grievances & Discipline, Op. 2004-6 (2004).

Nevertheless, although a municipal court judge would not violate Ohio Ethics Law by authorizing the acceptance of a donation of ten carbines to a court’s probation department when no judge or judicial employee benefits personally from the equipment and the donation is voluntary; the donation is improper because it violates the Ohio Code of Judicial Conduct.

## Conclusion

Under the Ohio Code of Judicial Conduct, a municipal court judge should not accept a donation of ten carbines to a court’s probation department for use in court security. Court security should not be an afterthought fortuitously met through a generous donation from a company that may in the future do business with the court, or have an interest in the judge’s rulings in firearms cases. A donation of carbines to a court creates an appearance of impropriety that the court’s security is haphazard or that a firearms company is attempting to influence the court. If carbines are necessary to court security, the court should purchase the carbines.

**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.**