

The Supreme Court of Ohio

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OPINION 2004-13

Issued December 3, 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[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]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 Canon 1, 2, and 3(C)(1) of the Ohio Code of Judicial Conduct, a municipal court judge may not prepare and sign a letter requesting local businesses to donate small items for use as program rewards and incentives for defendants in the mental health court and the judge may not direct a court employee to solicit such donations. Use of the judicial office and judicial employees to solicit donations from local businesses for defendants in mental health court programs is improper.

OPINION: A municipal court recently instituted a mental health court and the municipal court judge wants to use small items, such as umbrellas, gloves, hats, and gift certificates, as program rewards and incentives for defendants. The judge inquires regarding the propriety of preparing and signing a letter requesting donations and directing a court employee to solicit small item donations from local businesses.

May a municipal court judge prepare and sign a letter requesting local businesses to donate small items for use as program rewards and incentives for defendants in the mental health court and may the judge direct a court employee to solicit such donations?

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

Ohio Code of Judicial Conduct

Canon 2(C)(5) of the Ohio Code of Judicial Conduct restricts gifts to judges, but that rule is not applicable herein. The small items given by local businesses are not gifts for personal use by the judge or court employees. The donated items are for use as rewards and incentives for defendants participating in the mental health court.

Amended Canon 2(B)(2), effective October 1, 2004, also is not applicable to the question raised. Canon 2(B) governs a judge's membership and fundraising

activities in organizations. Upon amendment, Canon 2(B)(2)(a)(ii) permits a judge to “[p]articipate in but not solicit funds for *de minimis* fundraising activities [on behalf of an organization] that are directed at a broad range of the community and that may be performed by other volunteers who do not hold judicial office.” This rule does not govern whether a judge may seek donations for court defendants in a mental health court program.

Canon 3(C)(1) is applicable. Canon 3(C)(1) requires that a judge’s discharge of administrative duties be diligent and without bias or prejudice. A judge’s decision regarding solicitation and acceptance of a donation for a court is an exercise of the judge’s administrative duties. In making a diligent decision, a judge must consider factors such as the need for the donated items, the source of the donations, and whether such donation diminishes in the public’s eye the integrity, independence, and impartiality of the court.

Canon 1 is applicable. Canon 1 requires a judge to uphold the integrity and independence of the judiciary.

Canon 1 A judge shall uphold the integrity and independence of the judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and personally shall observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

Use of the judicial office and judicial employees to solicit donations from local businesses for defendants in mental health court programs is improper. Local businesses, may feel intimidated by such request because of the very real possibility that their cases and controversies may come before the court. Local businesses may question the integrity of the court in making such solicitation from entities that may be subject to their jurisdiction. Local businesses and the public might also question the court’s independence, when the court seeks outside financial support for its mental health court program.

Canon 2 is applicable. Canon 2 requires that “[a] judge shall respect and comply with the law and 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. For example, see, Opinion 2004-5, advising that [u]nder 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.” Bd. Commrs. Grievances and Discipline, Op. 2004-5 (2004). But, even offers of small magnitude may create

appearances of partiality and impropriety when arising from a source that is interested in matters before the court, regulated by the court, or doing or seeking to do business with the court.

A judge also 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 therefore 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.

It is the Board’s view pursuant to Canon 1, 2, and 3(C)(1) that a municipal court judge should not prepare and sign a letter requesting local businesses to donate small items for use as program rewards and incentives for defendants in the mental health court and should not direct a court employee to solicit such donations. Local businesses are subject to the jurisdiction of a municipal court. Donations of small items from local businesses for use as reward or incentives to defendants in a mental health court do not promote public confidence in the court. As to Canon 1, the integrity and independence of the judiciary diminishes when a judge uses the judicial office and judicial employees to solicit from local businesses the donations of items for use as rewards and incentives for defendants in mental health court. As to Canon 2, public confidence in the integrity and impartiality of the judiciary lessens when a judge or judicial employees ask local businesses subject to a court’s jurisdiction to donate items to defendants participating in the mental health court program. As to Canon 3(C), a judge’s administrative decision is not diligent if it diminishes the integrity and independence of the judiciary or erodes public confidence in the court’s integrity and impartiality. Under DR 8-101(A)(3), a serious concern is that those who agree to make such donations may do so as an attempt to influence the court as to future matters that may come before the court.

OHIO ETHICS LAW

Ohio Ethics Law is set forth in Chapter 102 and related statutes Sections 2921.42 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). 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).

Sections 102.03(D) and (E) of the Ohio Revised Code, prohibit the misuse of public office to secure, solicit, or accept a thing of value that is of such a character as to manifest a substantial and improper influence with respect to official duties. Section 102.03(F) prohibits a person from giving to a judicial officer or employee a thing of value that is of such a character as to manifest 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 court is considered an "improper" influence.

Nevertheless, it is not necessary for the Board to determine whether small items from local businesses for use as reward or incentives to defendants in a mental health court are a substantial and improper influence. The donated items are not for use by an individual judge or judicial employee. The donated items are for use by defendants in the mental health court program. Such facts do not invoke the restraints of Section 102.03. In addressing a related yet distinct issue, the

Board advised, “[a] municipal court judge may accept on behalf of the court a donation of artwork for the court’s historic building.” Bd. Commrs. Grievances and Discipline, Op. 2004-6 (2004). “Donations of things of value to a court are distinct from donations of things of value made to individual judicial officers and employees, and are not prohibited by Section 102.03.” Id.

The proposed conduct does not violate Ohio Ethics Law. The proposed conduct does violate the Ohio Code of Judicial Conduct.

Conclusion

Under Canon 1, 2, and 3(C)(1) of the Ohio Code of Judicial Conduct, a municipal court judge may not prepare and sign a letter requesting local businesses to donate small items for use as program rewards and incentives for defendants in the mental health court and the judge may not direct a court employee to solicit such donations. Use of the judicial office and judicial employees to solicit donations from local businesses for defendants in mental health court programs is improper.

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.