

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OFFICE OF SECRETARY

OPINION 2005-2

Issued February 4, 2005

SYLLABUS: It is proper for an association of judicial employees (Ohio Association for Court Administration) to charge vendors a fee to set up a booth at the association's educational conference to display products or services of interest to members. And, it is proper for an association of judicial employees (Ohio Association for Court Administration) to permit vendors to sponsor a meal, reception, open house, or other similar activity at the association's educational conference and discuss their products or services at the meal, reception, open house, or activity. Of course, there must be no strings attached to the vendor's support, in particular, no overt or sub rosa agreements that a judicial employee will try to influence a court to use a vendor's products or services.

Opinion 92-14 is modified to this extent: An association of court referees and magistrates may charge vendors a fee to set up a booth at an educational conference to display products or service of interest to members, and may permit vendors to sponsor a meal, reception, open house, or other similar activity at an educational conference and discuss their products or services at the meal, reception, open house, or activity.

OPINION: This opinion addresses questions regarding vendors providing support to educational conferences of a professional association whose membership is largely judicial employees. The inquiry does not raise and the opinion does not address support of educational conferences of a professional association of judicial employees by lawyers or law firms or other persons interested in matters before a court.

1. Is it proper for an association of judicial employees (Ohio Association for Court Administration) to charge vendors a fee to set up a booth at the association's educational conference to display products or services of interest to members?
2. Is it proper for an association of judicial employees (Ohio Association for Court Administration) to permit vendors to sponsor a meal, reception, open house or similar activity at the association's educational conference and to discuss the vendor's product or service at the meal or activity?

The Ohio Association for Court Administration (OACA) is a not-for-profit corporation whose membership includes court managers, court administrators, probation officers, and other persons who have administrative roles in Ohio courts. Some members are non-attorneys, some are attorneys and some are magistrates. Many of the members are judicial employees.

The OACA presents two educational conferences each year at various locations throughout the state. The educational conferences are an opportune event for vendors to promote, display, and discuss products and services either at booths or through sponsorship of receptions, meals, open houses, or activities. Since the association is made up of judicial employees, the OACA questions whether the presence and support of vendors who may or may not do business with the court is appropriate under Ohio Ethics Law.

Ohio Ethics Law

Judicial officers and employees are subject to the restrictions of Ohio Ethics Law. The appropriate advisory body for Ohio Ethics Law matters relating to judicial officers and judicial employees is the Board of Commissioners on Grievances and Discipline. Ohio Rev.Code Ann. §§ 102.01(F)(2) and 102.08 (West 2002).

Ohio Ethics Law is set forth in Chapter 102 and related statutes 2921.42 and 2921.43 of the Ohio Revised Code. Pertinent to this opinion is Section 102.03 (D), (E), and (F). For purposes of Chapter 102, judicial officers and judicial employees are “public officials and employees” and courts are “public agencies.” Ohio Rev.Code Ann. §102.01(B) and (C) (West 2002).

Sections 102.03 (D) and (E) prohibit judicial officers and judicial employees from using the judicial office or employment to secure, solicit, or accept a thing of value that is such a character as to manifest a substantial or improper influence with respect to the duties of the office or employment. Section 102.03 (F) is the corollary provision prohibiting persons from giving such things to judicial officers or judicial employees.

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.

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.

Vendors who would be interested in setting up a booth at an OACA conference are probably either doing or seeking to do business with a court. Vendors who would be interested in providing the cost of a meal, reception, or open house at an OACA conference are probably either doing or seeking to do business with a court.

As to the facts presented, it is the Board's view that there is no "giving" of "anything of value" to a judicial officer or employee. The "giving" is to an association, albeit, one comprised largely of judicial employees. But, this distinction makes a difference. When a vendor promotes its products or services by providing support to an association of judicial employees for an educational conference, either by paying money to set up a booth or sponsoring a reception, meal, open house, or other similar activity there is no substantial or improper influence on any individual judicial officer or employee. In fact, allowing promotion of products and services of interest to the court at an educational conference of a professional association is, of itself, educational.

Just as the Board is the appropriate ethics body for judicial officers and employees, the Ohio Ethics Commission is the appropriate ethics body for Ohio Ethics Law matters relating to public officials and employees. Ohio Rev. Code Ann. §§ 102.01(F)(3) and 102.08 (West 2002). In Ohio Ethics Commission Opinion 2002-02, the ethics commission advised that within the parameter discussed in the opinion, Ohio Ethics Law "does not prohibit a person from underwriting the cost of a meal, reception, or open house, at a conference of an association of public officials and employees, so long as the event is of an

ordinary, routine character and all of the public officials and employees who attend the conference are invited” and that the ethics laws “do not prohibit a public official or employee from attending a meal, reception, or open house, at a conference of an association of public officials and employees, sponsored by a person, so long as the event is of an ordinary, routine character, and all of the public official and employees who attend the conference are invited to attend the meal, reception, or open house.”

In addressing these similar issues, the Ohio Ethics Commission and the Board of Commissioners on Grievances and Discipline take slightly different approaches. The Board’s approach is that there is no thing of value being given to an individual judicial officer or employee and no substantial or improper influence on any individual judicial officer or employee. The Ohio Ethics Commission’s approach in Opinion 2002-02 is that although no public official or employee would individually receive anything of substantial value, the meals, receptions, and open houses are a substantial cost to the giver, but are generally not of such a character as to manifest an improper influence on the public officials or employees who accept the meal. To review the advice of the Ohio Ethics Commission as to persons providing the cost of a meal, reception, or open house at an educational or informational conference held by an association of public officials and employees see Ohio Ethics Commission, Opinion 2002-02 (2002).

In conclusion, this Board advises it is proper for an association of judicial employees (Ohio Association for Court Administration) to charge vendors a fee to set up a booth at the association’s educational conference to display products or services of interest to members. And, it is proper for an association of judicial employees (Ohio Association for Court Administration) to permit vendors to sponsor a meal, reception, open house, or other activity at the association’s educational conference and discuss their products or services at the meal, reception, open house, or similar activity. Of course, there must be no strings attached to the vendor’s support, in particular, no overt or sub rosa agreements that a judicial employee will try to influence a court to use a vendor’s products or services.

Opinion 92-14 is modified to this extent: An association of court referees and magistrates may charge vendors a fee to set up a booth at an educational conference to display products or service of interest to members, and may permit vendors to sponsor a meal, reception, open house, or other similar activity at an educational conference and discuss their products or services at the meal, reception, open house, or activity.

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.