



THE OHIO GENERAL ASSEMBLY

JOINT LEGISLATIVE ETHICS COMMITTEE

OFFICE OF THE LEGISLATIVE INSPECTOR GENERAL

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Advisory Opinion 2018-001

Issued: September 10, 2018

Syllabus by the Committee:

- 1) For the purposes of Revised Code 102.031(C)(1) and §5 of the Joint Legislative Code of Ethics, Members and legislative employees are prohibited under R.C. 102.031(C)(1) from accepting travel expenses from a legislative agent in the form of transportation in a ridesharing vehicle, unless such travel expenses are incurred for participation in a panel, seminar, or speaking engagement; or were incurred at a meeting or convention of a national organization of which any state agency or state institution of higher education is a dues paying member.
- 2) Members and employees may ride with a legislative agent in a ridesharing vehicle so long as the Member or employee reimburses the legislative agent for the Member or employee's portion of the total fare, as divided evenly among the riders. In the alternative, the Member or employee may directly pay the ridesharing service for the Member or employee's portion of the fare.
- 3) If a Member or employee accepts a ride from a legislative agent in a ridesharing vehicle and subsequently reimburses the legislative agent within seven calendar days for the Member or employee's portion of the total fare, the Member or employee has not accepted anything of value from the legislative agent.

Jurisdiction and Authority:

The Joint Legislative Ethics Committee ("JLEC" or "the Committee") is the ethics advisory body to the Ohio General Assembly and to its individual members, candidates, and employees.¹ The Committee has the authority to render advisory opinions relative to ethics, conflicts of interest, and financial disclosure under R.C. Chapter 102, or R.C. sections 2921.42

¹ R.C. 101.34(A)(8).

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or 2921.43.² Where the Committee issues a publicly sought advisory opinion, the person to whom the opinion is directed, and those similarly situated to the special set of circumstances presented, may reasonably rely on the opinion and be immune from criminal prosecution, civil suits, or actions for removal from office or employment for a violation of R.C. Chapter 102, or R.C. sections 2921.42 or 2921.43.³

Background & Issue Presented:

On occasion, Members of the General Assembly are invited by registered legislative agents to ride in a commercial vehicle, such as a taxicab. In recent years, the use of ridesharing vehicles, such as those offered by Uber or Lyft, has become more prevalent. The advent of these ridesharing vehicles gives rise to the following question, and the Committee now addresses: whether ridesharing vehicles constitute a commercial vehicle similar to taxis and are therefore excluded from the 50-mile personal automobile travel exception? In short, for purposes of R.C. 102.031 and section 5 of the Joint Legislative Code of Ethics, are ridesharing vehicles considered commercial vehicles or personal vehicles?

Consideration of the Issue:

1. R.C. 102.031(C)(1), section 5(B) of the Joint Legislative Code of Ethics, and Exceptions:

- A. *R.C. 102.031(C)(1):*

Questions concerning the acceptance of travel from a registered legislative agent necessarily implicate R.C. 102.031(C), which provides in relevant part:

(C) No member of the general assembly shall knowingly accept any of the following from a legislative agent:

(1) *The payment of any expenses for travel or lodging except as otherwise authorized by division (H) of section 102.03 of the Revised Code;*

[Emphasis added].

Subsection (C)(1) provides a blanket prohibition on the acceptance of payment for any travel or lodging expenses, except those specifically authorized by R.C. 102.03(H).

There are two exceptions provided by division (H) to the prohibitions of R.C. 102.031(C)(1). Members and employees are not prohibited from accepting either: 1) the

² R.C. 102.08(A).

³ R.C. 102.08(C).

payment of actual travel expenses where the Member or employee participates in a panel, seminar, or speaking engagement; or 2) transportation and lodging expenses incurred at a meeting or convention of a national organization of which any state agency or state institution of higher education is a dues paying member.⁴

B. The Joint Legislative Code of Ethics:

Section 5(B) of the Joint Legislative Code of Ethics mirrors the provisions in R.C. 102.031(C) with the addition that under the Legislative Code of Ethics, the prohibitions are also applicable to legislative employees. As such, for the purposes of this opinion, all references to R.C. 102.031(C) apply equally to section 5(B) of the Legislative Code of Ethics.

2. Definition of Travel:

In order to determine whether the acceptance of transport in a ridesharing vehicle provided by a legislative agent is prohibited, we must first determine whether the transportation is considered “travel” for purposes of the prohibition. “Travel” is not explicitly defined in either R.C. 102.031(C) or the Joint Legislative Code of Ethics. However, this Committee previously found, in 1997 JLEC Advisory Opinion 97-006, that for the purposes of R.C. 102.031(C)(1), “travel” is defined as transportation, including, but not limited to, “airplane, train, *common carrier*, and automobile travel” [emphasis added].⁵ The Committee clarified the definition by explaining that, “Where the mode of transportation is by automobile, only those trips which exceed 50 miles, one way, will be considered travel.”⁶ However, the Committee further explained, any transportation by airplane, train, or *common carrier*, is considered travel, regardless of the distance.⁷ Therefore, any transportation provided by a legislative agent in a common carrier is considered travel.

3. Definition of “common carrier”:

“Common carrier”, though not explicitly defined in the Revised Code, commonly means, “[a] commercial enterprise that holds itself out to the public as offering to transport freight or passengers for a fee. A common carrier is generally required by law to transport freight or passengers without refusal if the approved fare or charge is paid.”⁸ Another definition and explanation provides:

“To bring a person therefore within the description of a common carrier, he must be engaged in the business of carrying goods for

⁴ R.C. 102.03(H); 1997 JLEC Advisory Op. 97-006, at 4.

⁵ 1997 JLEC Advisory Op. 97-006, at 3.

⁶ *Id.*

⁷ *Id.*

⁸ *Common carrier*, BLACK’S LAW DICTIONARY 242 (9th ed. 2009).

others as a public employment, he must undertake to carry goods of the kind to which his business is confined, for persons generally, and he must hold himself out as ready to engage in the transportation of goods for hire as a business and not as a casual occupation. And this duty or obligation to the public by reason of the public nature of the employment and the increased responsibility imposed upon him by the law upon the grounds of public policy, mainly distinguish the common from the mere private carrier for hire.”⁹

A third definition explains that a common carrier is, “a transporter that serves all public, follows a schedule, carries specified cargo, and is the carrier of the contract or carriage.”¹⁰ To apply this definition to the facts at present, the ridesharing vehicle is the transporter serving the public. The driver has his or her own driving schedule, carries the passengers, and thus is the carrier of the contract.

From these definitions, it follows that the hiring of a vehicle with a compensated driver to provide transportation would constitute the use of a common carrier. The driver is engaged in the transportation of goods or passengers for compensation. This Committee considers it sufficient for a vehicle and driver for hire to constitute a common carrier. Similar to the modes of transportation listed by the Committee in 1997 JLEC Advisory Op. 97-006, ridesharing vehicles are a form of public transportation akin to common carriers. Whether the driver of a ridesharing vehicle drives as his primary source of income or if he or she drives as a “casual occupation” as used above, is irrelevant here. Meaning, if a person charges a fee to transport passengers as part of a commercial enterprise, that person is operating as a common carrier. Therefore, it is the opinion of this Committee, that a commercial enterprise in the business of transporting passengers for a profit, *e.g.*, a vehicle for hire, constitutes a common carrier.

Given this Committee’s definition of common carrier, it is the Committee’s opinion that ridesharing vehicles fall within the definition of travel as the term is used in R.C. 102.031(C)(1). Therefore, Members and employees are prohibited under that section from accepting personal travel in ridesharing vehicles provided by a legislative agent, regardless of the distance traveled.¹¹

4. Comparison to Rental Vehicles:

⁹ Robert Hutchinson, A TREATISE ON THE LAW OF CARRIERS: AS ADMINISTERED IN THE COURTS OF THE UNITED STATES AND ENGLAND Section 47 (Callaghan and Company, 2nd ed. 1882).

¹⁰ *Common Carrier*, THE LAW DICTIONARY, <http://thelawdictionary.org/common-carrier>.

¹¹ Except that a Member or employee may accept those expenses or reimbursement provided where the Member or employee participates in a panel, seminar, speaking engagement or national conference.

The acceptance of travel in a taxicab or a ridesharing vehicle differs from the acceptance of travel in a legislative agent's personal vehicle. In contrast to a taxi or ridesharing vehicle, the personal vehicle qualifies as an automobile for the purposes of R.C. 102.031(C)(1), and the travel is not prohibited so long as the trip is under 50 miles one way.¹² The same holds true should the legislative agent rent a vehicle for his or her use. The rental car, though owned by a business in the commercial enterprise of renting cars, is now converted to personal use. It is not a commercial carrier. For a Member or legislative employee to be required to inquire of the legislative agent as to the nature of the legislative agent's ownership status of a personal vehicle would lead to absurd results, which this Committee will not endeavor to further.

5. Reimbursement:

Members and legislative employees are reminded, if a Member or employee accepts transportation from a legislative agent but reimburses the legislative agent within seven days of the legislative agent making the expenditure for the transportation, the Member or employee will not have accepted travel as the term is used in R.C. 102.031(C)(1).¹³ With reimbursement, the Member or employee has not accepted a thing of value. Reimbursement shall be made for the Member or employee's portion of the total cost of the fare, divided evenly among the number of people in the vehicle (excluding the driver)¹⁴. The seven days begins at the time of the expenditure.¹⁵ Meaning, the days begin to accrue at the point of sale.

Conclusion:

Accordingly, the Committee finds, and Members and employees of the General Assembly are advised, that travel in a ridesharing vehicle is transportation by common carrier for the purposes of R.C. 102.031(C). Therefore, no Member or employee may accept travel expenses from a legislative agent for trips in a ridesharing vehicle.¹⁶ Members and employees may ride with a legislative agent in a ridesharing vehicle so long as the Member or employee reimburses the legislative agent for his or her portion of the total fare, as divided evenly among the riders. Where a Member or employee reimburses the legislative agent for his or her share of the ride, that Member or employee has not accepted a thing of value. In the alternative, the Member or employee may directly pay the ridesharing service for the Member or employee's portion of the fare.

¹² 1997 JLEC Advisory Op. 97-006, at 3.

¹³ *Id.* at 3-4.

¹⁴ Many ridesharing services allow passengers to pay the ridesharing service for the passenger's respective share of the cost of the ride at the time of service.

¹⁵ *Id.* at 4.

¹⁶ Except that a Member or employee may accept those expenses or reimbursement provided where the Member or employee participates in a panel, seminar, speaking engagement or attends a national conference of an organization to which any state agency or state institution of higher education pays membership dues.

This Advisory Opinion does not apply to or affect any use of a ridesharing service occurring on or before the adoption of this opinion by the Committee. This advisory opinion is based on the facts presented. It is limited to questions arising under chapter 102, and Sections 2921.42 and 2921.43 of the Revised Code and does not purport to interpret other laws or rules.