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THE JOINT LEGISLATIVE ETHICS COMMITTEE

Advisory Opinion 95-015
September 27, 1995

Syllabus by the Committee:

- (1) The member is not prohibited from contracting to receive compensation for obtaining a real estate license assuming the member does not use his authority or influence to procure a benefit that is different from other real estate agents similarly situated and
- (2) Payment received for the purpose of obtaining a real estate license, where the employment contract specifically states the payment is compensation is income for purposes of R.C. 102.02(A)(2)(a).

Jurisdiction and Question Presented

Pursuant to sections 101.34 and 102.08 of the Revised Code that direct the Joint Legislative Ethics Committee to act as an advisory body to the members and employees of the General Assembly on questions relating to ethics, conflicts of interest, and financial disclosure, the Joint Legislative Ethics Committee advises the members of the General Assembly on the following questions: (1) Can a member of the General Assembly contract with a real estate firm as an independent contractor where a term and condition of the contract provides for payment of expenses incurred in obtaining a real estate license? and (2) If the member may so contract, is the payment properly disclosed on the member's Financial Disclosure Statement as income?

Background

The member is seeking to enter into an independent contractor agreement with a real estate firm wherein the member would sell real estate for the firm. The proposed employment contract contains, among others, the following term and condition: "As compensation (the company) shall remit to (the member) on execution hereof, which consideration is herein acknowledged as received, the sum of One Thousand and Six Hundred Dollars (\$1,600) for the expenses of obtaining his licensure, which also shall cover the first 30 days of above referenced services." The member has asked first, if this contract term is allowable under the Ohio Ethics Law and related statutes and second, if so, what are the disclosure requirements?

Consideration of the Issues

Section 102.03

Divisions (D), (E), and (F) of section 102.03 provide as follows:

- (D) No public official or employee shall use or authorize the use of the authority or influence of his 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 him with respect to his 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 him with respect to his 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 him with respect to his duties.

Since the payment is for the purpose of obtaining a real estate license which is required for the performance of the services for which the firm is contracting, the payment by the company is reasonably related to the employment and does not appear to be extraordinary. However, the Committee cautions the member to confirm this benefit is conferred upon other persons seeking independent contractor status with the firm and that the member is in no way using his authority or influence as a member of the General Assembly to gain a benefit that is

different from other persons similarly situated and is of such a character as to manifest a substantial and improper influence upon the member with respect to his duties. Additionally, the member should avoid taking any actions that would result in the member's status as a member of the General Assembly being used to secure anything of value or the promise of anything of value for the firm or any person doing business with the firm.

Therefore, nothing in the Ohio Ethics Law and related statutes prohibits the member from contracting to receive a payment as compensation for obtaining a real estate license assuming the member does not use his authority or influence to procure a benefit that is different from others similarly situated.

Furthermore, the Committee cautions the member that he may not reference his status as a member of the General Assembly on any documents released by the real estate firm. For example, the member may not use his title (Senator or Representative) on letterhead, business cards, in advertisements or have the title used in any other type of medium.

Section 102.02

Division (A)(2)(a) of section 102.02 requires the "identification of every source of income . . . received during the preceding calendar year, in his own name or by any other person for his use or benefit, by the person filing the statement, and a brief description of the nature of the services for which the income was received." Based upon the terms of the contract, the \$1600.00 payment is the member's actual compensation for the first 30 days of his employment; therefore, the \$1600.00 will be added to the compensation received from the firm for the remainder of the year. Thus, the member must disclose the firm and his total compensation from the firm, within the appropriate range, on his Financial Disclosure Statement in the Income section.

Conclusion

Accordingly, the Committee finds and the member is so advised: (1) The member is not prohibited from contracting to receive compensation for obtaining a real estate license assuming the member does not use his authority or influence to procure a benefit that is different from

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other real estate agents similarly situated and (2) Payment received for the purpose of obtaining a real estate license, where the employment contract specifically states the payment is compensation is income for purposes of R.C. 102.02(A)(2)(a).

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.



William G. Batchelder, Chairman
Joint Legislative Ethics Committee