

OHIO GENERAL ASSEMBLY
OFFICE OF THE LEGISLATIVE INSPECTOR GENERAL
JOINT LEGISLATIVE ETHICS COMMITTEE

SENATE MEMBERS

RICHARD H. FINAN
CHAIRMAN
ROBERT R. CUPP BRUCE E. JOHNSON
JUDY B. SHEERER BEN E. ESPY
JEFFREY D. JOHNSON



TOM CHARLES
EXECUTIVE DIRECTOR

HOUSE MEMBERS

WILLIAM G. BATCHELDER
VICE-CHAIRMAN
JAMES W. MASON FRANK S. SAWYER
MARK L. MALLORY THOMAS M. ROBERTS
ANN WOMER BENJAMIN

THE JOINT LEGISLATIVE ETHICS COMMITTEE

Advisory Opinion 98-002
February 5, 1998

Syllabus by the Committee:

- (1) Under the facts presented here, R.C. 102.03(D), (E), and (F) prohibit a member of the General Assembly from accepting donations to a legal defense fund where the donor is doing or seeking to do business with, or regulated by, the General Assembly;
- (2) Under the facts presented here, R.C. 102.031(C) prohibits a member of the General Assembly from accepting any monetary donation from a Legislative Agent; and
- (3) Under the facts presented here, Section 10(B) of the Legislative Code of Ethics prohibits a member of the General Assembly from conducting a public or private fundraising event that seeks to provide money for the member's personal use.

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 and employees of the General Assembly on the following question: Can a legal defense fund be created on behalf of a member of the General Assembly?

Background

The member has stated the legal defense fund would be created by someone other than the member and would be independent of the legislator. The member would have no control over the fund, its income or expenditures. The fund would be used to pay the expenses of an attorney or law firm hired by the member to defend the member from either civil or criminal allegations arising from the member's performance of his or her official duties.

Consideration of the Issues

In the situation presented here, individuals would be donating money for the member to use in defending against any legal actions arising from the member's official duties. Although the money would be held in trust by the lawyer or law firm, any money donated is clearly for the exclusive use or benefit of the member. Therefore, any donation to the fund is considered a gift to the member. The Committee is not rendering an opinion with respect to the legality of creating or using a legal defense fund or any other type of fund.

R.C. 102.03(D), (E), and (F)

In determining a member's ability to accept a gift, a review of R.C. 102.03 is necessary. Divisions (D), (E), and (F) of section 102.03 of the Revised Code 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.

The term "public official or employee" is defined for purpose of R.C. 102.03 as any person who is elected or appointed to an office of a public agency. "Public agency" includes, among others, the General Assembly. See R.C. 102.01(B) and (C). Therefore, members of the General Assembly are subject to the provisions contained in R.C. 102.03. See JLEC Advisory Opinions 95-010 and 95-011. The term "anything of value" is defined for purposes of R.C. 102.03 to include money, goods, interest in realty, and every other thing of value. See R.C. 102.01(G).

Generally, R.C. 102.03(D), (E), and (F) prohibit a member or employee of the General Assembly from accepting, soliciting, or using the authority or influence of his or her public office or employment to secure anything of value where the thing of value could impair his or her objectivity and independence of judgment with respect to his or her official duties for the General Assembly.

In determining whether the member can accept donations to the fund, it must first be determined if the fund is a thing of value. As noted above, this phrase encompasses *money*, goods, interest in realty, and every other thing of value. Therefore, a donation to the fund is a thing of value for purposes of R.C. 102.03.

A determination that the donation is a thing of value does not end the inquiry; a thing of value must also be substantial and improper to be prohibited. This Committee has previously held it is necessary to examine the *source* and *nature* of the thing of value in determining whether it is substantial and improper. See JLEC Advisory Opinions 95-010 and 95-011. Regarding the *nature* of the thing, a definite and particular pecuniary benefit which is not nominal or *de minimis* is considered "substantial" for purposes of R.C. 102.03(D), (E), and (F). "Substantial" means of or having substance, real, actual, true; not imaginary; of considerable worth or value; important. Regarding the *source* of the thing of value, acceptance or solicitation of a thing of value is prohibited from a party that is doing or seeking to do business with, or regulated by, the General Assembly.

Here, the nature of the thing of value, a monetary donation, is real and has value. The value of course will vary depending on the size of the donation; however, it is assumed most donations will be more than nominal or *de minimis*. Therefore, a donation can be considered *substantial* for purposes of R.C. 102.03. As noted though, the donation must also be from an improper source in

order to be a prohibited gift. The source of each donation is unknown, however, the same standard is applied to each person or entity contributing money to the fund. If the donor is doing or seeking to do business with, or regulated by, the General Assembly, the donor is a prohibited source. Therefore, R.C. 102.03(D), (E), and (F) will prohibit donations from any donor who is doing or seeking to do business with, or regulated by, the General Assembly.

Furthermore, pursuant to R.C. 102.02(A)(7), the member would be required to disclose the source of any donation(s) which exceeded \$75, aggregated per calendar year, on his or her Financial Disclosure Statement where the source was not someone doing or seeking to do business with, or regulated by, the General Assembly.

R.C. 102.031

In addition to those donors doing or seeking to do business with, or regulated by, the General Assembly, there is an additional class of person's from whom a member of the General Assembly may not accept gifts. R.C. 102.031(C)(3) provides:

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

(3) *A gift of any amount in the form of cash or the equivalent of cash, or a gift of any other thing of value whose value exceeds seventy-five dollars. As used in division (C)(3) of this section, "gift" does not include any contribution or any gifts of meals and other food and beverages or the payment of expenses incurred for travel to destinations either inside or outside this state that is received by the member of the general assembly and that is incurred in connection with the member's official duties. (Emphasis added.)*

Therefore, the member is prohibited from accepting donations from any individual registered as a Legislative Agent regardless of the size of the donation.

Solicitation of Funds

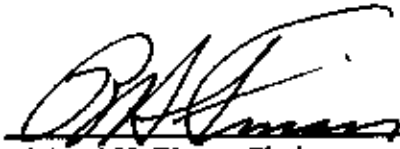
Section 10(B) of the Legislative Code of Ethics provides "No member shall conduct a public or private fundraising event that seeks to provide money for his personal use." The purpose of

establishing the fund is to raise money for the member's personal use; however, based upon the facts presented, the member is not personally establishing the fund, it is being established by a third party. Additionally, it can be argued the establishment of a legal defense fund is not an "event" as that term is used in Section 10(B). The situation presented here, although not a technical violation of this section is at least suspect and has the appearance of impropriety.

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.

Conclusion

Accordingly, the Committee finds and the member is so advised, (1) R.C. 102.03(D), (E), and (F) prohibit a member of the General Assembly from accepting donations to a legal defense fund where the donor is doing or seeking to do business with, or regulated by, the General Assembly; (2) R.C. 102.031(C) prohibits a member of the General Assembly from accepting any monetary donation from a Legislative Agent; and (3) Section 10(B) of the Legislative Code of Ethics prohibits a member of the General Assembly from conducting a public or private fundraising event that seeks to provide money for his personal use.



Richard H. Finan, Chairman
Joint Legislative Ethics Committee