

**INFORMAL OPINION IO-2000-005
ISSUED AUGUST 3, 2000**

You have requested an informal staff opinion on the following:

1. *Do the Constitutional Ethics Rules, Sections 257:1-1-1 et seq. of the Rules of the Ethics Commission, 74 O.S. Supp. 2000, Ch. 62, App. [“the Rules”], prohibit a civic-minded, private donor from providing state officers or employees of a departmental unit of an Oklahoma governmental agency a cash award for distinguished public service recognizing extraordinary improvement in the quality and timeliness of service?*
2. *May state officers and/or employees accept this cash award?*
3. *Is such an award subject to limits?*

FACTS

You have advised:

- A civic-minded, private donor wishes to publicly acknowledge and reward a particular departmental unit’s completed acts comprising an extraordinary improvement in the quality and timeliness of services to the State of Oklahoma.
- The award will be unsolicited.
- It will be made after performance of the acts under consideration and without prior notice to the recipient(s).
- The donor neither does business nor seeks to do business with the state agency in question.

ANALYSIS

While in some instances the amount is limited, nothing in the Rules prohibits the giving of an award of the type you have described. This answers your first question.

The Rules do, however, regulate the receipt of such an award. All state officers/employees are bound by a provision which embodies the oath taken upon appointment or employment. It proscribes direct or indirect receipt of money or other “valuable thing” for the performance or non performance of any act of duty of office, except compensation allowed by law.

Accountability

- (a) All state officers and all state employees:

(1) shall support, obey, and defend the Constitution and laws of the State of Oklahoma; and

(2) shall not knowingly receive, directly or indirectly, any money or other valuable thing, for the performance or nonperformance of any act or duty pertaining to his or her office, other than the compensation allowed by law .

(b) Nothing in Subsection (a) of this section shall be construed to include matters within the purview of the Oklahoma Personnel Act, Sections 840 et seq. and 841 et seq. of Title 74 of the Oklahoma Statutes.

Section 257: 20-1-3

Since the proposed award is to be given subsequent to work performed and without notice to the unit officers/employees, it could not be received “for performing or not performing an act or duty pertaining to the office.” It is therefore staff’s view that nothing in Section 257:20-1-3 prohibits receipt of the proposed award.

The same rationale applies to Rules Section 257:20-1-9(a), which provides.

Restraints on solicitation or acceptance of anything of value—Disclosure

(a) **Influence of official act, fraud or official duty.** No state officer and no state employee shall, directly or indirectly, ask, demand, exact, solicit, seek, accept, assign, receive, or agree to receive anything of value for the state officer or employee or for any other person or entity, in return for being:

(1) influenced in the performance of an official act;

(2) influenced to commit, aid in committing, collude in, or allow fraud, or make an opportunity for the commission of fraud on a governmental entity; or

(3) induced to perform or fail to perform an act in violation of the state officer's or state employee's official duty.

Section 257:20-1-9(a)

The state officer or employee would already have performed the services or duties at the point when the award is made. It therefore cannot be said to have influenced the performance or failure to perform official duties. Hence, it is staff’s opinion that Section 257:20-1-4 also does not prohibit the acceptance of this award.

Similarly, since it is to be given after the performance of acts or duties and without the knowledge of the recipient officer/employees, the award cannot be said to have been solicited or secured through use of official position. Staff therefore finds that the award does not run afoul of Section 257:20-1-4, which states:

Misuse of office

(a) No state officer or state employee shall use his or her official position to solicit or secure special privileges, exemptions or compensation for himself, herself or others, except in the performance of his or her duties or as may be allowed by law .

* * *

(c) No state officer or state employee shall:

(1) receive or solicit any compensation that would impair his or her independence of judgment for his or her services as an officer or employee of any state agency, from any source other than the state, unless otherwise provided by law; or

(2) accept or solicit other employment which would impair his or her independence of judgment in the performance of his or her public duties.

* * *

Section 257:20-1-4

In answer to your second question, staff finds that nothing in the Rules precludes a state officer or employee from receiving the award under these circumstances.

Limits, however, may apply. The Rules deem a cash [i.e. money] a “thing of value.”

Definitions

"Anything of value", "Thing of value" or "Things of value"

* * *

(1) These terms, to the extent that consideration of equal or greater value is not received, include the following:

(A) a pecuniary item, including **money**, or a bank bill or note;

* * *

Section 257:1-1-2

[emphasis added]

Like all “things of value” the Rules regulate the amount which a state officer or employee may receive within a calendar year from a lobbyist, lobbyist principal, those doing or seeking to do business with the state and/or those with a substantial financial interest in actions or matters before or affecting the governmental entity of which the state officer's or state employee's office or employment is a part. The Rules set a \$300 per calendar year limit on such.¹

¹We note in passing that the Rules specifically exclude from the definition of “anything of value” a plaque or trophy which does not exceed \$200 in value.

Definitions

"Anything of value", "Thing of value" or "Things of value"

* * *

(b) **Calendar year limits on things of value.** No state officer, state employee, or an immediate family member of a state officer or state employee shall, directly or indirectly, ask, demand, exact, solicit, seek, accept, assign, receive, or agree to receive things of value in a calendar year which, in the aggregate, are valued at more than three hundred dollars (\$300) from a person who the state officer or state employee knows or should know:

(1) is a lobbyist or lobbyist principal, provided that the following shall not be subject to this subsection:

(A) things of value received as a result of or arising out of employment by, or doing business with, a lobbyist or lobbyist principal; and

(B) things of value received from any director, stockholder, partner, agent, affiliate, member, employee or officer of a lobbyist principal as a result of a personal or casual relationship with the recipient;

(2) is seeking to do business or doing business with the governmental entity of which the state officer's or state employee's office or employment is a part; or

(3) has a substantial financial interest in actions or matters before or affecting the governmental entity of which the state officer's or state employee's office or employment is a part.

Section 257:20-1-9(b)

Whether this provision applies is fact specific. You have advised that the donor is not doing or seeking to do business with the state agency in question. You do not specify whether the donor is a lobbyist or lobbyist principal or whether he/she has a substantial financial interest in matters before or affecting the instant state agency.

The Rules define the latter as:

Definitions

"Substantial financial interest" means an interest that could result in directly or indirectly receiving a substantial pecuniary gain or sustaining a substantial pecuniary loss as a result of ownership or interest in a business entity, or as a result of salary, gratuity or other compensation or remuneration from any person, partnership, organization or association. The term 'substantial financial interest' includes, but is not limited to, an ownership interest of five percent (5%) or more in a business enterprise or an interest

(2) These terms do not include:

* * *

(E) a plaque or trophy with a value that does not exceed two hundred dollars (\$200);

Section 257:1-1-2

in an entity from which dividends of one thousand dollars (\$1,000.00) or more were derived during the preceding calendar year.

* * *

Section 257:1-1-2

If the donor falls under either of the latter two criteria [i.e. if he or she is a lobbyist or lobbyist principal or, according to the above definition, has a substantial financial interest in actions or matters before or affecting the governmental entity of which the state officer's or state employee's office or employment is a part], the limit on the cash award, together with any other "things of value" given by the donor to this state officer or employee, may not exceed \$300 in a calendar year.

CONCLUSION

It is therefore the informal opinion of the Ethics Commission staff that:

- 1. Nothing in the Rules prohibits a civic-minded, private donor from providing an unsolicited cash award for distinguished public service to state officers or employees of a departmental unit of a specified state agency in recognition of an extraordinary improvement in the quality and timeliness of service. As a "thing of value," the award may be subject to a \$300 per calendar year limit if given by a lobbyist, lobbyist principal, those doing or seeking to do business with the governmental entity of which the state officer's or state employee's office or employment is a part, or where the donor has a substantial financial interest in actions or matters before or affecting the governmental entity of which the state officer's or state employee's office or employment is a part.**
- 2. Neither do the Rules prohibit state officers or employees from accepting a cash award under these circumstances.**
- 3. The facts provided are silent on whether this donor is a lobbyist or lobbyist principal or has a substantial financial interest in matters before or affecting the state agency in question. If the answer to either is yes, the cash award, together with any other "things of value" given by the donor to state officers or employees, would be limited to \$300 in a calendar year per recipient.**

The Rules permit the Commission staff to issue informal opinions, upon the approval of the Chair or Vice Chair, provided the matter is reasonably susceptible to a single analysis and is not the subject of litigation, investigation or legislation. We hope these informal letters shed light on the issues and provide guidance. They are not, however, official pronouncements.

This opinion letter has been approved by the Commission Chairman. According to policy, this opinion will be submitted to the members, any of whom can request that the matter be converted to an ethics interpretation and considered by the full Commission.

Like ethics interpretations, informal staff opinions are fact specific. They answer only the question or questions put forth in the request according to information described in the “Facts” section [supra]. While they may shed light on other situations, this opinion does not necessarily control them.

Informal opinions are published with sufficient deletions to prevent identification of the persons or entities involved. The name of the requestor is considered confidential. This letter has been labeled accordingly.