

AUDITOR OF STATE BULLETIN 2000-006
MARCH 9, 2000

TO: ALL SCHOOL DISTRICT TREASURERS
ALL SCHOOL DISTRICT SUPERINTENDENTS
ALL COMMUNITY SCHOOLS
ALL INDEPENDENT PUBLIC ACCOUNTANTS

SUBJECT: COMPENSATION OF SCHOOL DISTRICT OFFICIALS OR EMPLOYEES BY
PRIVATE TRAVEL VENDORS

It has recently come to our attention that some public school district officials and employees who arranged out-of-state or overnight field trips for students may have received cash compensation, gifts or other things of value (hereafter collectively referred to as "compensation") from the private travel agents, tour operators and/or bus companies (hereafter "private travel vendors") with whom the field trips were booked. Public school district officials and employees should be aware that the receipt and acceptance of such compensation poses significant auditing issues and may possibly pose significant legal issues as well.

Ohio Rev. Code § 117.01(C) defines "public money" to be "any money received, collected by, or due a public official under color of office, . . ." School district board members, superintendents, administrators, principals and teachers are all "public officials" for the purposes of that definition. Ohio Rev. Code § 117.01(E). When arranging, booking or approving field trips through or with private travel vendors, school district officials and employees are acting under "color of office" as that term is defined in Ohio Rev. Code § 117.01(A). In the situations that have come to the attention of the Auditor of State's Office, the compensation paid to the school district official or employee by the private travel vendor would not have been paid but for the official or employee using the authority of his or her public office to choose the vendor, which is then paid for the field trip with public money. For these reasons, the Auditor of State's Office is taking the position that any compensation paid by a private travel vendor to a school district official or employee after the official or employee has participated in selecting the vendor to provide a field trip is "public money" and must be remitted to the school district.

The Auditor of State's Office will be scrutinizing such field trips in all school district audits for the fiscal year ending June 30, 2000. In advance of our audits, Boards of Education, superintendents and treasurers should identify all field trips that were arranged or taken since July 1, 1999 and assure themselves that any compensation received by any school district official or employee is or has been remitted to the district. Auditors will also be examining district policies and procedures regarding school district officials' or employees' receipt of compensation from any individuals or entities that do business with the district.

School districts also should be aware that an individual district official's or employee's receipt of compensation from private vendors doing business with the district may raise serious issues under one or more of Ohio's ethics laws, particularly Ohio Rev. Code §§ 102.03, 2921.42 and 2921.43. The Auditor of State's Office has requested more definite guidance from the Ohio Ethics Commission on

the issue of whether a school district official's or employee's receipt of compensation from a private travel vendor where the official or employee had a role in selecting the vendor for a field trip violates any of the criminal statutes under Ohio's ethics law and related statutes.

For the purposes of Ohio's ethics laws, the Ohio Ethics Commission has ruled that Board of Education members,¹ school district superintendents,² principals,³ and teachers⁴ are subject to Ohio's ethics laws.⁵ In addition, community schools created pursuant to Chapter 3314 of the Revised Code are subject to the ethics laws, with some limited exceptions. Ohio Rev. Code § 3314.03(A)(11)(e). Generally, the ethics laws prohibit a public official or a public employee from (a) using the authority or influence of his or her public office to receive additional compensation for performing their ordinary duties, (b) securing any interest in a public contract, or (c) receiving anything of value that may serve to improperly influence the official in the conduct of his or her duties. *See* Ohio Rev. Code §§ 2921.43(A), 2921.42(A) and 102.03(D), (E) and (F). These statutes are *criminal* statutes and violators may be subject to jail time, fines or both.

When the Ethics Commission's guidance is obtained, our Office will disseminate the guidance in a future Bulletin. If you have any questions regarding any of the issues raised in this Bulletin, contact your regional Auditor of State office or contact our Legal Division in Columbus at (800) 282-0370.

¹Ohio Ethics Commission Advisory Opinion Nos. 89-005 and 82-003

²Ohio Ethics Commission Advisory Opinion No. 98-003

³Ohio Ethics Commission Advisory Opinion No. 91-006

⁴Ohio Ethics Commission Advisory Opinion Nos. 94-002 and 93-017

⁵It must be noted that the Ethics Commission has opined that teachers are considered "public officials" under Ohio Rev. Code § 102.03 only if they perform or have the authority to perform administrative or supervisory duties. However, teachers are considered "public officials" under Ohio Rev. Code §§ 2921.42 and 2921.43 regardless of whether they perform or have the authority to perform such duties. Ohio Ethics Commission Advisory Opinion No. 93-017.