

OPINION NO. 96-033**Syllabus:**

A professor's award of extra credit toward the completion of a course of study to a student who votes in an election does constitute something of value and is prohibited by R.C. 3599.01 and R.C. 3599.02.

To: Alan R. Mayberry, Wood County Prosecuting Attorney, Bowling Green, Ohio
By: Betty D. Montgomery, Attorney General, May 30, 1996

I have before me your request for my opinion on whether it is a violation of state election laws for a college professor to give extra credit to any student who votes in a primary, general or special election. Your letter indicates that the professor does not condition the receipt of extra credit on the manner in which the student exercises his or her vote, but rather awards credit for the mere act of voting. It is the professor's intent to encourage voting, not to advocate any particular position.

Two statutory provisions form the basis for your request. The first, R.C. 3599.01 provides in pertinent part:

(A) No person shall before, during, or after any primary, convention, or election:

....

(3) Advance, pay, or cause to be paid or procure or offer to procure money or other valuable thing to or for the use of another, with the intent that it or part thereof shall be used to induce such person to vote or to refrain from voting.

The second, R.C. 3599.02, states:

No person shall before, during, or after any primary, convention, or election solicit, request, demand, receive, or contract for any money, gift, loan, property, influence, position, employment, or other thing of value for himself or another:

....

(C) For agreeing to vote or refraining from voting....

Accordingly, Ohio law prohibits anyone from giving or receiving something of value for agreeing to vote. This prohibition expressly extends to the agreement simply to vote, even if the voter does not agree and is not pressured to vote in a certain way on a particular issue or candidate. The question then becomes whether extra credit, given to a college student to be used towards the achievement of a grade or evaluation, is something of value as contemplated by R.C. 3599.01 and .02.

Neither R.C. 3599.01 nor R.C. 3599.02 define the terms, "valuable thing" or "thing of value." Because both statutes are penal in nature, they are subject to the rule that, "[s]tatutes or ordinances of a penal nature...will be strictly construed and their scope cannot be extended to include limitations not therein clearly prescribed." *State ex rel. Moore Oil Co. v. Dauben*, 99 Ohio St. 406, 124 N.E. 232 (1919) (syllabus, paragraph one). The General Assembly has, however, enacted R.C. 1.03, which defines the term "anything of value," when used in a penal statute, as follows:

As used in any section of the Revised Code for the violation of which there is provided a penalty or forfeiture, unless the context otherwise requires, "anything of value" includes:

- (A) Money, bank bills or notes, United States treasury notes, and other bills, bonds, or notes issued by lawful authority and intended to pass and circulate as money;
- (B) Goods and chattels;
- (C) Promissory notes, bills of exchange, orders, drafts, warrants, checks, or bonds given for the payment of money;
- (D) Receipts given for the payment of money or other property;
- (E) Rights in action;
- (F) Things which savor of the realty and are, at the time they are taken, a part of the freehold, whether they are of the substance or produce thereof or affixed thereto, although there may be no interval between the severing and taking away;
- (G) Any interest in realty, including fee simple and partial interests, present and future, contingent or vested interest, beneficial interests, leasehold interests, and any other interest in realty;
- (H) Any promise of future employment;
- (I) *Every other thing of value.* (Emphasis added.)

Because the definition contained in R.C. 1.03 includes the phrase "[e]very other thing of value," the scope of R.C. 1.03 is not immediately apparent.

The initial step in interpreting any statute is to give effect to the plain meaning of the words employed. R.C. 1.42. The plain meaning of similar language in a penal statute¹ was adopted by the court in *Scott v. State*, 107 Ohio St. 475, 141 N.E. 19 (1923), where the supreme court relied upon *Webster's International Dictionary* for the following definition of "value": "The property or aggregate properties of a thing by which it is rendered useful or desirable." Continuing, the court stated that value depends upon "the desire of some person or persons, not necessarily of most persons or all persons," to seek the thing offered. *Id.* at 487, 141 N.E. at 23. Applying this subjective standard, the court held that soliciting improper sexual relations was a valuable thing within the meaning of R.C. 2921.02(B). Thus, the court

¹ In *Scott v. State*, 107 Ohio St. 475, 141 N.E. 19 (1923), the supreme court interpreted General Code Section 12823, now R.C. 2921.02(B) which provides "[n]o person, either before or after he is elected, appointed, qualified, employed, summoned, or sworn as a public servant or party official, shall knowingly solicit or accept any valuable thing or valuable benefit to corrupt or influence him with respect to the discharge of his duty." See *State v. Bizzantz*, 3 Ohio App. 3d 108, 444 N.E.2d 92 (Clermont County 1982) (a job commitment is a valuable thing within the meaning of R.C. 2921.02(B)).

interpreted "value," in the context of a penal statute, as having a subjective element, and requiring assessment on a case-by-case basis.²

However, necessarily implicit in the *Scott* standard is a requirement that the thing of value be concrete, ascertainable and directed towards a specific person or persons. While this subject has not been specifically addressed by the courts, I believe it is reasonable to conclude that the court would disregard mere blanket promises made to the population in general since there would be no identifiable person or persons to whom the subjective standard could be applied. Furthermore, it seems proper to conclude that the promise or award of the thing of value should be made to the person who would ultimately receive it and not to some third party.

Application of this standard to the facts presented by your request leads me to the conclusion that a professor's award of extra credit toward the completion of a course of study to a student who votes in an election is violative of R.C. 3599.01 and 3599.02. If the student is striving for a higher grade, the receipt of extra credit is valuable to him or her. Grades are an evaluation of performance, and there is certainly a subjective value associated with superior performance. Furthermore, a high grade point average can be critical to a successful career after college. This would be true if no grades were awarded in the class but a minimum level of achievement was necessary to complete the course and receive credit for it. If the minimum level is not achieved, then the money spent to take the class would be lost and additional money would need to be spent if the student decided to repeat the class. A direct monetary consequence can be attributed to either scenario and therefore, the extra credit constitutes a thing of value. Since the extra credit would most probably be given in the form of points or a letter grade, it is concrete and ascertainable. Furthermore, the award is given to an identifiable group, the students in the professor's class. Consequently, the *Scott* standard is satisfied.

² Arguably, *State v. Clark*, 60 Ohio App. 367, 21 N.E.2d 484 (Marion County 1938), could be cited for the contrary proposition. The *Clark* court was asked to interpret the meaning of the term "every other thing of value," as used in G.C. 12369 (now R.C. 1.03). G.C. 12369 expressly included as "anything of value" a list of items, followed by the phrase "and every other thing of value." The court noted first that the classes of property expressly mentioned were strictly personal property or property of a character that could be severed from real property and thereby become personal property. Applying the rule of statutory construction, *ejusdem generis*, in which the meaning of general words following a list of particular subjects is limited to items of the same nature as those listed, the *Clark* court concluded that the phrase "every other thing of value" could include only items of personal property, not real estate. See also *State v. Yurek*, 93 Ohio L. Abs. 433, 198 N.E.2d 773 (Ct. App. Marion County 1963) (holding that title to real estate does not constitute a thing of value). However, I believe the 1976 amendments to R.C. 1.03 invalidate this line of cases. In 1975-1976 Ohio Laws, Part II, 3508 (Am. H.B. 1040, eff. Aug. 27, 1976), the General Assembly added divisions (G) and (H) to R.C. 1.03 to include any interest in real estate or a promise of future employment as things of value. Consequently, the enumerated items in R.C. 1.03 are no longer of a uniform character, and the phrase "thing of value" should not be limited by the language that precedes it.

However, I note that this does not necessarily preclude a professor from awarding extra credit as an award for other types of participation in the electoral process. There are many ways to participate that do not directly involve voting.

It has been suggested that some type of *de minimis* standard should be read into R.C. 3599.01 and .02. It would appear that the award of extra credit, particularly when it is not used to coerce a vote in a certain manner, is insignificant. I must agree that encouraging participation in the electoral process is an admirable goal that should be encouraged whenever possible. However, to do so by way of a formal opinion of the Attorney General would be a misuse of the opinion process. I am constrained to opine on what the law is, not what I believe it should be. To do otherwise would inject a measure of personal opinion which is not within the province of an Attorney General opinion. The General Assembly is charged with the constitutional duty to write the laws of this state. When it chooses to paint with a broad brush, I must interpret its enactments in such a fashion. Any other approach would be inconsistent with my duties as Attorney General.

Therefore, it is my conclusion and you are so advised that the a professor's award of extra credit toward the completion of a course of study to a student who votes in an election does constitute something of value and is prohibited by R.C. 3599.01 and R.C. 3599.02.