

SUBJECT: AGENCY RECEIVING HONORARIUM FOR EMPLOYEES' PARTICIPATION IN SPEECH OR WORKSHOP

AGENCY ACTION RE. REFERENCES TO LEGISLATORS SERVING AS EX-OFFICIO MEMBERS OF COMMISSION

SUMMARY:

A public employee would not be prohibited from accepting a meal incidental to giving a speech in an official capacity at a meal function where the meal is provided to all other persons participating in the same event. The agency would not be prohibited by the Ethics Reform Act of 1991 from charging an organization for costs associated with a presentation as reimbursement to the agency for program costs. As to legislators no longer being able to serve on a state commission in an ex-officio capacity, Section 6 provides that the Code Commissioner will delete all references to legislators serving on state boards or commissions, except as allowed by Section 8-13-770.

QUESTION:

The Executive Director of the Commission on Aging questions whether an agency policy needs to be amended whereby honoraria for agency employee program participation is paid to the agency and goes into an agency training account as reimbursement for training program costs. The policy provides:

"As the Commission staff becomes more highly specialized, requests for consultation from the private sector or from non-aging interests within the State or from entities outside of South Carolina (e.g., request for consultation from a staff member with specialized expertise in a particular discipline) are expected to increase. In considering such a request, the staff person should evaluate the impact of the request on his or her routine duties and consult with his or her supervisor. Consideration should also be given to any possible real or perceived conflict of interest (e.g. providing testimony as a paid expert witness in an action against another State agency).

If it has been determined that there will be no significant detrimental impact on the persons job performance, the requested consultation can be provided in one of two ways:

- A. Acceptance of Fee or Honorarium. If a staff member is asked to perform a short term activity not directly related to his or her official position, such as speaking at a conference, he or she may accept a fee or honorarium; the staff member is required to use annual leave for any time away from work and may not incur any costs to the Commission (typing, copying, travel, etc.) If work is

performed for another state agency, payment must be made in accordance with current dual employment policies. If an employee is offered an honorarium and feels it would be inappropriate to accept it, the employee may ask that the honorarium be designated to the Commission. The decision of whether to accept or not accept a fee or an honorarium shall be discussed with the Executive Director".

She also questions whether the agency needs to revise its legislation since two legislators serve as ex-officio members.

DISCUSSION:

This opinion is rendered in response to a letter dated November 15, 1991 requesting an opinion from the State Ethics Commission. The Commission's jurisdiction is limited to the applicability of the State Ethics Act (Act No. 248 of 1991; Section 8-13-100 et. seq., as amended, 1976 Code of Laws). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation.

Section 8-13-715 provides:

A public official, public member, or public employee acting in an official capacity may not receive anything of value for speaking before a public or private group. Notwithstanding the limitations of Section 2-17-90, a public official or public member may receive payment or reimbursement for actual expenses incurred for a speaking engagement. The expenses must be reasonable and must be incurred in a reasonable time and manner in which to accomplish the purpose of the engagement. If the expenses are incurred out of state, the public official or public member incurring the expenses must receive prior written approval for the payment or reimbursement from:

- (1) the Governor, in the case of a public official of a state agency who is not listed in an item in this section;
- (2) a statewide constitutional officer, in the case of himself;
- (3) the President Pro Tempore of the Senate, in the case of a member of the Senate;
- (4) the Speaker of the House, in the case of a member of the House of Representatives; or
- (5) the chief executive of the governmental entity in all other cases.

The Commission notes that the definition of "anything of value" includes an "honorarium or compensation for services". See Section 8-13-100(1)(a)(xii). The Commission does not believe acceptance of a meal received by a public employee, public official, or public member who is participating in an event where the same meal is served to all other persons attending or participating in the same event to be compensation for services or for speaking. Accordingly, a meal accepted under

the above restrictions would not be violation of the Ethics Reform Act.

The Commission notes that "official capacity" is not defined in the Ethics Reform Act. For purposes of this Act, the Commission defines speaking engagements by public employees "in an official capacity" as those which (1) arise because of the position held by the employee, (2) involve matters which fall within the responsibility of the agency or employee, and (3) are services the agency would normally provide and for which the employee would be subject to expense reimbursement by the public employee's agency. Official capacity also means those duties that are attached to a public office or employment by the Constitution, statutes, executive order, promulgated rules and regulations, published job description or agency directive.

The State Ethics Commission notes for clarification that "speaking before a public or private group" encompasses not only a traditional breakfast or luncheon speech but also more extended participation as speaker at a workshop, seminar, or training session or as a panel participant.

The State Ethics Commission has reviewed the agency policy and finds that the payment of honoraria to the agency would not be prohibited by the above-quoted sections. The Commission would advise, however, that, rather than the employee making a determination as to the appropriateness of accepting an honorarium, any requests for expense reimbursement to the agency be channeled through the agency in advance.

Nothing in this opinion precludes a public employee from making presentations or speeches and receiving an honorarium on matters outside the employee's official capacity when (1) such are accomplished on the employee's own time, (2) no public materials or equipment are utilized, except as provided in Section 8-13-700(A), and (3) it does not interfere with the needs of the agency.

As to the Director's second question, Section 6 provides:

The Code Commissioner is directed to delete all references to legislative members serving in any capacity as a member of a state board or commission, except as allowed by Section 8-13-770 of the 1976 Code.

Section 8-13-770 provides:

A member of the General Assembly may not serve in any capacity as a member of a state board or commission, except for the State Budget and Control Board, the Advisory Commission on Intergovernmental Relations, the Legislative Audit Council, the Legislative Council, the Legislative Information Systems, the Reorganization Commission, the Judicial Council, the Sentencing Guidelines Commission, the Commission on Prosecution Coordination, and the joint legislative committees.

The State Ethics Commission notes that the responsibility for deleting such references to legislative members of state boards and commissions rests with the Code Commissioner. The Code

Commissioner should be contacted concerning the applicability of this provision.