

SUBJECT: ACCEPTANCE OF MEALS, LODGING, AND HONORARIA BY PUBLIC EMPLOYEES

SUMMARY:

(1) State agencies may contract with other agencies to reimburse the agency for travel and/or lodging costs associated with providing services. (2) State employees may not receive honoraria for giving a speech. (3) State employees who serve on national councils or task forces may have travel expenses paid by such organizations. Payment of expenses for providing speeches or service to other organizations should be reimbursed to the employee's agency for reimbursement to the employee. (4) Employees attending meal or hospitality functions at conferences sponsored by vendors would not be prohibited from accepting such hospitality if provided to all conference participants. (5) Meals provided by vendors at vendor-sponsored shows would not be prohibited unless given to influence.

QUESTION:

The Director of the Division of Human Resource Management has requested an advisory opinion on a number of issues:

(1) Division staff visit out-of-town state agencies. Budget reductions have limited travel which limits desk audits and face-to-face meetings. Out-of-town agencies have occasionally provided lodging and/or meals to the staff.

(2) Productivity and Quality Services provides consulting services to state agencies on a contractual basis. Some arrangements call for staff to spend time in another city with the contracting agency providing meals and/or lodging at their facilities. No documentation has been made nor has there been any monetary exchange. She questions whether there would be any difference if arrangements would be incorporated in a written contract.

Also, she questions whether the agency would be permitted to pay for meals, travel and/or lodging directly to the employee rather than to the Division.

(3) The Executive Leadership Program invites professors from public and private colleges and universities to make presentations on a variety of issues. In most cases, the subjects on which they speak relate to the subject matter they teach. In the past, honoraria up to \$500 has been paid because of preparation time.

(4) The Division has solicited and/or accepted donations from private companies who already do business with the state to provide food and beverages for conference participants. The meals and refreshments are equally available to all conference participants. Corporate sponsors may make payment directly to the sites facility or by check payable to the Division c/o of the conference.

(5) A state employee may be invited by an organization (a professional association, another state, an educational institution, etc.) to speak, teach a class, participate in a panel, etc. The activity is directly related to the employee's primary duties and is considered desirable by the employee's agency. The employee receives no payment for this service, but the sponsoring organization may pay for some or all of the expenses of travel, meals, and lodging.

(6) State employees sometimes serve on councils, task forces, etc. convened by some department of the federal government. The Federal agency may pay for all or part of the expenses for the member to attend meetings.

(7) State employees sometimes serve as officers of national professional organizations and in that capacity are required to attend board meetings. The organization may pay for all or part of the expenses for the board member to attend the meeting.

(8) State employees are members of any number of national professional organizations that hold conferences. At these conferences, corporate sponsors may provide meals or host other functions. These corporate sponsors may or may not already do business with the state and may or may not be awarded state contracts in the future.

(9) Budget and Control Board employees regularly work with many vendors in the planning and provisioning of information technology services for the state. The vendor may host a meeting, including lunch. Provided there is no ongoing procurement with which the particular vendor is involved, is it appropriate to accept lunch?

DISCUSSION:

This opinion is rendered in response to a letter dated December 30, 1991 requesting an opinion from the State Ethics Commission. The Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (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.

As to the first question, in Advisory Opinion SEC AO92-023, the Commission advised that reimbursement of expenses could be obtained from the agency or group to whom services were provided. The Commission would suggest that agencies reimburse Human Resource Management for costs associated with provided agency services. The Commission would also advise that a contract could be entered into with the out-of-town agencies to arrange travel, meals, and lodging for the affected employee.

As to the second question, a contractual arrangement to provide travel and/or lodging in conjunction with services provided by the agency would not be prohibited. The response to the first question suggests that no payment should be paid directly to the employee for travel and/or lodging, but

instead that such reimbursement be paid to the agency and then reimbursed to the employee according to agency travel policies and procedures.

As to the third question, Section 8-13-715 prohibits the acceptance of anything of value for giving a speech in an official capacity. The State Ethics Commission advised in Advisory Opinion SEC AO92-023 that a public employee may accept a meal given in conjunction with a speech provided it is given to all participants of the event. An honorarium may not be given to or accepted by a public employee for giving a speech in his official capacity.

As to the fourth question, the State Ethics Commission is aware that various state agencies, as well as organizations comprised of agencies and employees, have in the past routinely solicited and/or accepted donations from private firms. These donations have been utilized to defray some of the expenses of conferences and conventions, which otherwise would have to be borne by the agencies or the employees themselves.

The Commission notes that Section 8-13-705 prohibits the giving of anything of value to a public official, public member or public employee with the intent to influence official action. This same section prohibits the solicitation or receipt of anything of value by a public official, public member or public employee in return for being influenced. The Commission does not believe that solicitations such as described above are ipso facto violations of Section 8-13-705. The Commission does feel the need for the establishment of guidelines for solicitation and donation so as to minimize the possibility of undue influence.

In light of the fact that those firms who are asked to help defray the costs of an event may be doing business or be seeking to do business with the agency or organization involved, the Commission suggests the following guidelines for any such solicitation:

- (1) Solicitation be done either by a separate foundation and/or by employees who are not directly involved in agency activities regarding such businesses which are being solicited.
- (2) All interested potential sponsors be given the opportunity to contribute.
- (3) The contribution be made to a separate fund or account, with no industry source supporting any particular activity or event
- (4) Such industry source may be identified as a conference supporter or sponsor on conference programs, billboards, etc. with no amounts being shown to participants.

As to the fifth, sixth, and seventh questions, the Commission advised in Advisory Opinions SEC AO92-037 and SEC AO92-058 that employees could accept travel, meal and lodging arrangements from Federal government agencies or sister states for participating in training programs. Such travel arrangements should be approved in advanced by the agency to insure that they are in accordance with state travel policies and procedures. As to national professional organizations of which state employees serve as officers, such payment of expenses would not be prohibited. However, as to other organizations, educational institutions, etc., the Commission would advise that the agency follow the agency reimbursement policy as provided in Advisory Opinion SEC AO92-023 with employee reimbursement in accordance with agency travel reimbursement policies and procedures.

As to the eighth question, the Commission notes that state employees often attend national conferences which may have corporate sponsors for meals and/or other functions. Such sponsors may or may not already do business in this state and may or may not be awarded state contracts in the future. The Commission advises that attendance at those functions sponsored by vendors which are provided to all participants would not be prohibited.

As to the final question, the Commission advised in Advisory Opinion SEC AO92-039 that a meal provided by a vendor at a vendor-sponsored show would not be prohibited unless such meal is given to influence an official action.