

SUBJECT: REIMBURSEMENT OF EXPENSES TO PUBLIC SCHOOL EMPLOYEES

SUMMARY:

A school district employee conducting work for the Department of Education on district time may be paid and reimbursed expenses through the school district. Employees conducting work for the Department in accordance with the off-duty employment guidelines may be paid or reimbursed directly by the Department.

QUESTION:

The General Counsel for the Department of Education raises questions concerning the payment of honoraria to public school employees who assist the Department in carrying out its duties. The honoraria are paid to employees for performing work for the Department while also receiving pay as a district employee. The amount paid is often small. The State benefits in that the cost of hiring professionals to perform the same functions would be much higher.

DISCUSSION:

This opinion is rendered in response to a letter dated May 6, 1992 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.

**Is it permissible to continue to pay these school employees: (1) if they are doing the work during a time they are also being paid by the school district?**

In Advisory Opinions SEC AO92-023 and SEC AO92-061, 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 the Department of Education reimburse the school employee's employer for costs associated with provided agency services at the same time they are being paid by the school district. The Commission also calls attention to requirements of Section 8-13-715 which provides in part as follows:

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.

Based on the facts submitted, the principals who are asked to make presentations as part of the EIA

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seminar would be prohibited from receiving honoraria for speaking before the group. Their school districts, however, may be reimbursed for the employees' actual expenses incurred in the speaking engagement.

**(2) If they are doing the work during a time they are not being paid by a school district?**

In prior advisory opinions, the State Ethics Commission has advised that a public employee may engage in outside employment consistent with established guidelines: (1) that no public materials or equipment are utilized, except as provided by Section 8-13-700(A), (2) such work is engaged in on the employee's own time, (3) the work does not interfere with the needs of the agency, and (4) the public position is not utilized to obtain or continue the employment. The employee may receive payment for work which is being conducted in accordance with these guidelines.

**(3) Reimbursement of actual expenses such as travel, and lodging, in either case?**

Reimbursement for expenses should be made in accordance with the above discussion, i.e., if the work is done on school district time, payment should be reimbursed through the agency; if in accordance with the off-duty guidelines, payment may be made direct to the employee.