

ETHICS INTERPRETATION EI-1995-013
ISSUED SEPTEMBER 28, 1995

The Ethics Commission [the "Commission"], in executive session of its regular meeting, addressed your request for an ethics interpretation. You have asked:

Do the Constitutional Ethics Rules [Section 257:1-1-1 et seq. of the Rules of the Ethics Commission, 74 O.S. Supp.1995, Ch. 62, App.] permit an employee of the Oklahoma State Regents for Higher Education, who is a trustee of an Internal Revenue Code 501 (c)(3) organization, to accept a retainer or honoraria, transportation and travel related expenses resulting from attending a function, meeting or seminar of the organization?

FACTS

You have advised that the Oklahoma State Regents for Higher Education ["OSRHE"] participates in an Internal Revenue Code ["IRC"] 501(c)(3) not-for-profit organization devoted to the improvement of education. OSRHE purchases various services and/or goods from this organization, such as research products, training services and the like. As such, this entity is doing business with the state. Additionally, you have advised that the organization has matters pending before OSRHE. The question is whether an OSRHE employee, who serves as a trustee of the entity, may accept honoraria and/or a retainer in excess of \$300 annually, transportation, or anything of value, such as travel-related expenses, in connection with his or her attendance at a function, meeting or seminar on behalf of the organization.

ANALYSIS

The Constitutional Ethics Rules [*supra*] regulate the acceptance of things of value by state officers and employees from lobbyists, lobbyist principals, those doing or seeking to business with the state or those with a substantial financial interest in actions or matters before or affecting the governmental entity of which his or her office or employment is a part. "Anything of value", including "thing of value" or "things of value", is broadly defined. Paragraph (1)(L) of the definition, at Section 257:1-1-2, expressly encompasses honoraria and compensation for services [e.g. retainers of the type here described]. The rules set an aggregate annual ceiling of \$300 on the acceptance of such things.

Restraints on solicitation or acceptance of anything of value

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(b) **Calendar year limits on things of value.** No state officer, state employee, or an immediate family member of a state officer or state employee shall, directly or indirectly, ask demand, exact, solicit, seek, accept, assign, receive, or agree to receive things of value in a calendar year which, in the aggregate, are valued at more than three hundred dollars (\$300) from a person who the state officer or state employee knows or should know:

(1) is a lobbyist or lobbyist principal, provided that the following shall not be subject to this subsection:

(A) things of value received as a result of or arising out of employment by, or doing business with, a lobbyist or lobbyist principal; and

(B) things of value received from any director, stockholder, partner, agent, affiliate, member, employee or officer of a lobbyist principal as a result of a personal or casual relationship with the recipient;

(2) is seeking to do business or *doing business with the governmental entity of which the state officer's or state employee's office or employment is a part*; or

(3) has a substantial financial interest in actions or matters before or affecting the governmental entity of which the state officer's or state employee's office or employment is a part.

257:20-1-9

[emphasis added]

OSRHE employees may thus accept up to \$300 annually in honoraria, retainers or other things of value from entities doing business with the state or having a substantial financial interest in matters pending before the agency.

The constitutional rules include exceptions to the definition of "anything of value". Among them, at paragraph (2)(P) of the definition of the term at 257:1-1-2, is one for "transportation furnished to a state officer or state employee to assist the officer or employee in the performance of the officer's or employee's official duties and from which the officer or employee receives no personal benefit." This permits the OSRHE employee to accept transportation provided under described circumstances without regard to amount and without counting it against the \$300 annual limit.

As a special exception, the rules also provide that state officers or employees who are officers or directors of an IRC 501(c)(3) organization may accept things of value when receipt of such results from his or her attending a function, meeting or seminar on behalf of, or as a representative of that organization.

(e) **Exceptions for forms of compensation, gifts to state, and officers/directors of organizations.** Nothing in this section shall prohibit the acceptance or require the disclosure of:

(1) compensation, bonuses, dividends, interest payments, employee benefits, expense reimbursements or other forms of compensation or earnings on investments;

(2) anything of value which is accepted on behalf of the state of Oklahoma pursuant to Section 381 et seq. of Title 60 of the Oklahoma Statutes; or

(3) the solicitation or acceptance of anything of value for or from either:

(A) a charitable organization or an organization described in Section 501 ©of Title 26 U.S.C., Section 501 (c), as it currently exists or as it may be amended; or

(B) a tax-exempt professional organization established by state statute or rules passed by the Oklahoma Supreme Court, by a state officer or state employee, who is an officer or director of the organization, when receipt of anything of value results from the state officer or state employee attending a function, meeting or seminar on behalf of, or as a representative of, the organization.

257:20-1-9

Articles of Incorporation and Bylaws of the instant organization call directors "trustees". In this instance, a trustee is a director within the meaning of 257:20-1-9(e). Consequently, the OSRHE employee may accept anything of value resulting from attending a function, meeting or seminar on behalf of, or as a representative of, this IRC 501(c)(3) organization. Things of value given or received on this basis are without limitation and do not count against the \$300 per year limit.

CONCLUSION

It is, therefore, the ethics interpretation of the Ethics Commission, as voted on in regular session at its meeting on September 28, 1995, that an OSRHE employee may accept from an IRC 501 (c)(3) organization, which is seeking to do business or doing business with the state and/or has a substantial financial interest in actions or matters before or affecting OSRHE, a retainer or honoraria in an aggregate amount not to exceed \$300 annually. The Commission further finds that paragraph (2)(P) of the definition of "anything of value", "thing of value" or "things of value", at Section 257:1-1-2, excludes transportation furnished to a state officer or employee to assist in the performance of his or her official duties and from which no personal benefit is derived. Thus, the OSRHE employee may accept transportation furnished and accepted on this basis without regard to amount and without counting it against the \$300 annual limit. Further, the Commission finds that the OSRHE employee, who, as a trustee, serves as a director of an IRC 501(c)(3) organization, may accept things of value which result from attending a function, meeting or seminar on behalf of, or as a representative of this organization. Those items may also be accepted without limitation and without counting against the \$300 per year limit.

Please be advised that ethics interpretations by law will be published by this Commission without identifying petitioners.