

**INFORMAL OPINION IO-1994-012
ISSUED SEPTEMBER 22, 1994**

This is in response to your letter of May 10, 1994, wherein you posed the following questions:

Is it permissible for you, as the director of the Firefighters Pension and Retirement System, attend a risk management conference for fiduciaries, which is limited to invitees only, with attendance, travel and accommodations provided compliments of the Chicago Mercantile Exchange ["Exchange"]?

The Constitutional Ethics Rules [Section 257:1-1-1 et seq. of the Rules of the Ethics Commission, 74 O.S. Supp. 1994, Ch. 62, App.] speak to the issue of state officers and employees receiving things of value. They provide as follows:

Restraints on solicitation or acceptance of anything of value--Disclosure

(b) 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.

(c) State officers and state employees who determine state policy or who make final spending decisions for the state or any governmental entity shall report monthly the source, recipient, type, date, and exact amount or retail value of things of value received in a calendar year valued from \$50 to \$300 in the aggregate for the private benefit of the officer or employee or his or her immediate family or an organization with which the officer or employee is associated 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.

When exact values are not known and not ascertainable, a good faith estimate of the fair market value shall be reported. Reports shall be due by the tenth day of each month for the period covered by the previous month. No report shall be due for periods during which things of value under this subsection were not received. The report shall be signed by the state officer or state employee who shall attest to the report's accuracy and veracity, and the signature shall be notarized.

257:20-1-9(b) and (c)

The rules also provide exceptions to things of value. Applicable provisions are as follows:

"Anything of value", "Thing of value" or "Things of value"

(1) These terms, to the extent that consideration of equal or greater value is not received, include the following:

* * *

(2) These terms do not include:

(P) 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;

* * *

(T) any gratuity provided at a meeting, conference, or seminar by sponsors, exhibitors, etc., the cost of which is not borne by a registrant to such meeting, conference, or seminar.

257:1-1-2

In the materials you forwarded, the following facts appear:

1. You have been invited to attend the Third Annual Chicago Mercantile Exchange Risk Management Symposium: Futures and Options for Fiduciaries.

2. Attendance is "limited to a select number of invited guests from major pension plans, foundations, endowments, universities and consulting organizations."
3. The Exchange has offered you free attendance at the conference plus complimentary round-trip coach airfare and two nights' lodging.
4. The Exchange is where all option and futures are traded.
5. Attendance at the conference provides you no personal benefit, but familiarizes you with various brokers who serve as speakers.
6. Although the invitation does not reflect it, to your knowledge the speakers at the conference include brokers who contribute to the cost of the conference.
7. A manager in your state agency purchases options or futures through a brokerage house.
8. A brokerage house purchases a seat on the Exchange.
9. The brokerage house and the exchange divide, in unknown portions, the trade cost paid on every share traded [six cents per share].

The instant situation presents a picture of what was intended as an exception to the rule against receipt of things of value. While the Exchange benefits from each trade made by a brokerage house [through its share of the trade cost], it is the brokerage house which contracts with the state to purchase or trade shares. The Exchange does not directly do business, or seek to do business, with the state. It is, hence, outside the rules.

CONCLUSION

In conclusion, as the director of the Firefighters Pension and Retirement System, you may attend a risk management conference for fiduciaries, which is limited to invitees only, with attendance, travel and accommodations provided compliments of the Exchange. The instant situation does not fall within the purview of Section 9 of Chapter 20 of the Constitutional Ethics Rules and the definition of things of value found in Section 2 of Chapter 1 thereof. Thus, you would not be limited by the amount of, or be required to disclose, things of value you receive from the Exchange. Although brokerage houses contribute to the costs of the conference, such costs are excluded from the definition of things of value when you attend the conference at the request of the governmental entity you serve.

Please be aware that informal opinions are not official pronouncements of the Commission. Hence, this letter carries no greater weight than the views of any other citizen. The Commission is available to issue interpretations on matters arising from the Ethics Commission Act and the Constitutional Ethics Rules. These are known as Ethics Interpretations. They are official and bind the future action of the Commission.