

**INFORMAL OPINION IO-1996-001
ISSUED NOVEMBER 15, 1996**

In the executive session portion of its regular meeting held November 15, 1996, the Ethics Commission considered your request for an ethics interpretation. The Commissioners determined that this matter can be answered from the clear language of the governing provisions. Since it requires no interpretation, your request has been concerted into an informal opinion. The following is a staff letter in answer to your questions. You have asked:

Do the Constitutional Ethics Rules [“the Rules”], Section 257:1-1-1 et seq. Of the Rules of the Ethics Commission, 74 O.S. Supp. 1996, Ch. 62, App., require the Oklahoma State Boards Association to report meals, lodging, honoraria, travel, gasoline and the like when provided state officers or employees who are married to OSSBA board members when the officers/employees attend OSSBA functions with their spouses? May OSSBA pay honoraria, meals and transportation to state officers or employees who appear as presenters at OSSBA workshops?

FACTS

You have advised that OSSBA has one or more lobbyists. We understand that the organization is incorporated and claims tax exempt status pursuant to Section 501(c) of Title 26 of the United States Code.

ANALYSIS

Preliminary to addressing whether and what items OSSBA must report under the instant facts is the question of what can be received from the organization and by whom.

The Rules govern the ethical conduct of all state officers and employees. OKLA. CONST. ART. XXIX, § 3(B). Section 257:1-1-1(b). Public members, meaning those appointed to compensated or uncompensated part-time positions on agencies, boards, commissions and the like, are state officers. As such, they are subject to the Rules. All such persons and their immediate family members – defined as a child under the age of eighteen years residing in a state officer’s or state employee’s household, a spouse of a state officer or state employee, and an individual claimed by either as a dependent for income tax purposes – are restricted in what can be received from both lobbyists and entities, like OSSBA, which have lobbyists.

The Rules set a limit on the amount of “things, thing or anything of value” which can be received by state officers, employees and members of their immediate families from certain sources. Section 257:20-1-9 sets a \$300 per calendar year aggregated limit on “things of value” which can be accepted from – among others – lobbyists and lobbyists principals.

Restraints on solicitation or acceptance of anything of value – Disclosure

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(b) **Calendar year limit 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.

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Section 257:20-1-9

Similarly, lobbyists and lobbyist principals are prohibited from giving state officers, employees, or their immediate family members “things of value” in excess of \$300 per year in the aggregate.

Anything of value reporting by lobbyists — Preservation of accounts, books, etc.

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(c) **\$300 annual limit on things of value and exceptions.** Lobbyists or lobbyist principals shall not give things of value which, in the aggregate, are valued at more than \$300 annually to any state officer or state employee or the immediate family member of a state officer or employee, provided that the following shall not be subject to this subsection:

(1) things of value given by a lobbyist or lobbyist principal as a result of or arising out of employment of, or the lobbyist or lobbyist principal doing business with a state officer or state employee or the recipient; and

(2) things of value given by 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.

Section 257:23-1-2

The Rules thus provide a \$300 per annum limit on both designated givers and receivers of “things of value”.

The latter, which includes “thing or anything of value” is a defined term found at Section 257:1-1-2. It includes meals, except for “food and beverage consumed on the occasion when participating in a charitable, civic, or community event...which bears a relationship to the state officer or employee’s office and is being attended in an official capacity” or ones “served at meetings at which the state officer or employee is an invited guest”, or “modest items of food and refreshments, such as soft drinks, coffee and donuts offered other than as part of a meal.” The term includes lodging, honoraria, transportation, and, by implication, gasoline used in that transportation.

The Rules provide a special exception for state officers/employees who are officers or directors of 501(c) corporations.

Restraints on solicitation or acceptance or anything of value — Disclosure

(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:

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

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

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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.

Section 257:20-1-9

State officers or employees who serve as OSSBA officers or directors can therefore attend its functions at the organization’s expense without incurring a reporting obligation or affecting the annual limit on giving or receiving “things of value.

Another exception distinguishes between “things of value” provided public members, because of the position they hold, as opposed to those given in the course of personal or casual relationships. Public members are permitted to accept, without limitation, “things of value” received apart from their status as such.

(c) **Prohibition versus limit — Exception.** ...Subsection (b) shall not apply to public members when things of value are received but are not given as a result of the public member’s status as a public member. Id.

The Rules further exempt the lobbyist or lobbyist principal from reporting “things of value” given in such instances.

Things of value to state officers or state employees of regulatory governmental entities

...Provided further, this provision shall not apply, however, to things of value given to a public member when not given as a result of the public member's status as a public member.

Section 257:23-1-3

That aside, OSSBA may give, and state officers, employees or their immediate family members may receive, items included in the definition (e.g. meals, lodging, transportation for a non-official purpose) up to the annual limit. The Rules require lobbyists and lobbyist principals to report the giving of such once they exceed \$50 in the aggregate within a specified six month period.

(b) **Disclosure of things of value exceeding \$50.** The report shall be signed by the lobbyist, who shall attest to the report's accuracy and veracity, and the signature shall be notarized. The reports shall include the information specified in Subsection (d) of this section for things of value given to a state officer or state employee or the immediate family member of a state officer or state employee by the lobbyist or any lobbyist principal by whom the lobbyist is employed or retained, the costs of which exceed fifty dollars (\$50) in the aggregate during a six-month period beginning January 1 and ending June 30 or beginning July 1 and ending December 31.

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Id.

While the Rules no longer provide for recipient reporting, we recommend that a private record be kept. This will enable the state officer or employee to comply with the \$300 annual limit on "things of value" they, or members of their immediate families, receive from a single designated source.

Your second question is whether the organization may pay state officers/employees honoraria, meals and transportation for appearing as presenters at workshops. Nothing in the Rules prohibits this. Honoraria is, however, specifically included in the definition of "things of value". As such, it counts toward the \$300 per year limit both with respect to the giver and receiver. And, like receipt of other such items given to state officers, employees and members of their immediate families, it triggers a reporting requirement when the amount exceeds \$50 in the aggregate during a six month period. As a lobbyist principal, OSSBA must report such in accordance with the above cited provision.

As to meals and travel expenses, the Rules permit state officers or employees who, in the performance of their official duties, appear as presenters at OSSBA workshops – and who derive no personal benefit from same – to accept a meal offered as part of the event, as well as transportation to and from the locale. These fall with specific exceptions to the definition of "things of value" and do not count toward the \$300 annual limit on what OSSBA may give, or on what state officers/employees may receive. The exception is limited only to the state officer or employee who acts as presenter. It does not extend to any other member of his or her immediate family.

We further note with respect to that can be claimed as an exception, that no other meal or meals are permitted. Nor, is lodging. The latter is not excepted from the definition of “things of value”. It therefore counts toward the \$300 per annum limits for the giver and receiver and is subject to being reported by OSSBA.

CONCLUSION

It is therefore the informal opinion of the staff of the Ethics Commission that Section 257:20-1-9(b) of the Constitutional Ethics Rules [supra] restricts a state officer, employee, and/or their immediate family members from accepting more than \$300 in the aggregate per calendar year in “things of value” from entities, like OSSBA, which retain lobbyists. Likewise, Section 23-1-2(b) prohibits lobbyist principals, such as OSSBA, from giving in excess of an aggregated \$300 per year in “things of value” to state officers, employees or members of their immediate families.

“Things of value” include meals (except those provided under certain cited circumstances), lodging, transportation and gasoline incident to that transportation. While such “things of value” may be accepted, they will, unless the items fall within a specified exception, count toward the annual limits of both the giver and receiver.

In instances where OSSBA gives “things of value to state officers, employees or their immediate families, it will incur a reporting requirement when value exceeds \$50 in the aggregate during a six month period. The latter begins January 1 and ends June 30 or begins July 1 and ends December 31 of each year.

The Rules contain an exception which permits state officers and employees who serve as OSSBA officers or directors to attend the organization’s functions at its expenses. Also excepted are items given public members as a result of personal or casual relationships. Neither of these count toward the \$300 limit either with respect to the giver or receiver.

State officers or employees who, in the performance of their official duties, appear in an official capacity as presenters at OSSBA workshops – and who derive no personal benefit from same – may accept a meal offered as part of the event and transportation to and from that locale. These also do not count toward the \$300 annual limit either with respect to OSSBA or the state officer/employee. State officers/employees may accept honoraria for their presentations. But, the latter is a “thing of value”, subject to the \$300 per annum limit of both the giver and receiver. OSSBA must therefore report it, according to the provisions previously explained.

The exception is limited only to the state officer or employee who acts as a presenter. It does not extend to any other member of his or her immediate family.

With respect to what can be claimed as an exception, no other meal or meals are included. Nor, is lodging. The latter is not excepted from the definition of “things of value”. It therefore counts toward the \$300 per annum limits for the giver and receiver and is subject to being reported by OSSBA.

The Ethics Commission staff can issue informal opinions, upon the approval of the Chair or Vice Chair, provided the matter is reasonably susceptible to a single analysis and is not the subject of litigation, investigation or legislation. We hope these informal letters shed light on the issues and provide guidance. They are not, however, official pronouncements and hence do not bind the Commission. Conclusions set forth in this letter thus carry no greater weight than the views of any other citizen.