



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NO. 89-35

Acceptance of Fee Waivers and/or Expense Payments
by State Employees Not Subject to Filing Requirements
of §1-83

A state employee, Phyllis E. Lemell, has asked the Ethics Commission six questions regarding the application of the Code of Ethics for Public Officials, Conn. Gen. Stat. Chapter 10, Part I, to fee waivers and/or expense payments received by state employees who are not subject to the filing requirements of Conn. Gen. Stat. §1-83, for attendance at, or participation in, an educational conference.

As a preliminary matter, it should be noted that the Ethics Commission strongly believes that the State should pay for state operations, activities, and functions. Ethics Commission Advisory Opinion No. 88-3, 49 Conn. L.J. No. 38, p. 5C (March 22, 1988). It should also be noted that individual agencies may have stricter rules regarding acceptance of gifts than those administered by the Ethics Commission. Therefore, any employee considering acceptance of any gift, including a gift to the State, should not only check with the Ethics Commission but with his or her agency as well.

For purposes of this opinion, it is assumed that the conference is sponsored by a national organization whose local chapter may or may not be registered in Connecticut as a lobbyist. Conference topics include developments in the industry which is regulated by the state employee's agency. The conference is of the type that if funds were available, the employee's state agency would normally pay for the employee's attendance and reasonable and necessary expenses.

The sponsoring organization offers a "government rate" discounting the conference fee and the hotel room rate for all government employees.

Because of his or her particular expertise, the employee has been asked to participate in the conference as a guest speaker and/or moderator of a panel discussion. The sponsors will waive

the conference fee for any person who so participates in the conference. In addition, the sponsors have offered to pay for the air fare and hotel room of the employee to facilitate his or her appearance at the conference, an inducement which may or may not be offered to non-government employees.

Specifically, Ms. Lemell has asked the following questions:

1. If the sponsor discounts the conference rate or hotel room rate for all government employees, as an inducement for attendance, is this a gift facilitating the execution of state functions under §1-92-51, Regulations of Connecticut State Agencies, i.e., a gift to the State?

2. If the sponsor waives the conference fee for all persons who participate in the conference by delivering a speech or moderating a panel discussion, is the state employee's waiver considered a gift to the State?

3. If the sponsor not only waives the conference fee but also pays the necessary expenses for all such participants, does this constitute a gift to the State with regard to the state employee?

4. Do the answers to questions 1-3 differ if the sponsor or the sponsor's local chapter is a registered lobbyist?

5. Do the answers to questions 1-4 differ if the waiver of conference fees and the payments of necessary expenses are offered to a particular state employee only and not to other participants in the conference?

6. Are there any reporting requirements with which the state agency or employee must comply in any of these fact situations?

Taking Ms. Lemell's questions in turn:

1. Generally, the Code of Ethics for Public Officials limits the gifts which a state employee may receive. A state employee may not solicit or accept anything of value on the understanding that the official action or judgment of the state employee would be or had been influenced thereby. Conn. Gen. Stat. §1-84(g). Also, a state employee may not use his or her public office or position to obtain personal financial benefit. Conn. Gen. Stat. §1-84(c). And, if the donor is known to be a registered lobbyist, or to represent one, the state employee may not, in any calendar year, accept any gift or gifts known to

have an aggregate value of \$50 or more. Conn. Gen. Stat. §1-84(j).

The Code does allow public officials or state employees who are required to file annual Statements of Financial Interests to accept a fee or honorarium under certain circumstances. Conn. Gen. Stat. §§1-83(a), 1-83(b). No other state employee may accept a fee or honorarium offered by virtue of his or her public position. See Ethics Commission Advisory Opinion No. 82-3, 43 Conn. L.J. No. 39, p. 9B (March 30, 1982).

However, §1-92-51, Regulations of Connecticut State Agencies exempts from the Code's lobbyist gift limitation gifts given, not for the personal use or benefit of the public official, but rather to facilitate the execution of state action or functions.

Here, the government room and/or conference fee rate would qualify as a gift to the State, because the conference is one to which the agency would send people if the State had funds available to do so. All that the employee need do to accept a gift to the State in this context is to have the appropriate superior at his or her agency certify in writing that the employee's attendance at the conference will facilitate state business (i.e., that the conference is relevant to the employee's state duties) and that the State would ordinarily send the employee to the conference if funds were available. The appropriate superior is someone with enough authority at the agency to certify as to the propriety of accepting the gift to the State, and who is also close enough to the employee's position to be able to judge the relevancy of the conference to the employee's job. For example, the employee's unit, bureau or division chief will often be the appropriate superior.

2. The answer to question 2 is the same as the answer to question 1. In fact, it would seem that the State's interests are even better served when an employee actively participates in the conference, because the State's reputation is thereby enhanced.

3. Generally, the acceptance of a trip of this magnitude, i.e., air fare, conference fee, hotel accommodations, and perhaps other expenses, would violate §1-84(c), in that it would appear that the state employee has used his or her public position to obtain personal financial gain. However, if the procedure outlined in the answer to question 1 is followed, (regarding certification by a superior) the payment of necessary expenses may be allowed as a gift to the State. "Necessary expenses" means reasonable expenses which the State itself would

pay. These expenses do not include lavish accommodations, first class travel, any type of gift, or the expenses of anyone travelling with the state employee.

Whether or not reasonable meal expenses may be included as part of the gift to the State depends on the specific factual circumstances of the conference. If the conference is a local one-day conference, which concludes before dinner, the purchase of the employee's dinner would not be included in the gift to the State. If, however, the conference was not local, reasonable meal expenses would certainly be a part of the gift to the State.

4. A registered lobbyist may give a gift to the State. In the situations presented in questions 1-3, the payment of expenses incidentally benefits the recipient, as well as furthering state business. Therefore, if the gift to the State incidentally benefits a public official or members of a public official's staff, the lobbyist must report the expenditures on its financial report in accordance with Conn. Gen. Stat. §1-96.

Additionally, the Ethics Commission has recently recommended an amendment to §1-92-51, Regulations of Connecticut State Agencies, to require the reporting by a lobbyist of any gift to the State valued at \$50 or more, regardless of whether the gift benefits a state employee or public official, or benefits no particular individual but instead facilitates state business in some more general way.

Finally, if the lobbyist chooses to provide a state employee with, for example, the dinner after the one-day conference as discussed in the answer to question 3, the lobbyist may do so, provided that the \$50 food and drink limit and/or the \$50 gift limit of the Code are not exceeded. Conn. Gen. Stat. §1-91(g).

5. A waiver of conference fees and the payment of necessary expenses for only one state employee suggest the troublesome scenario of an improper use of office, in violation of §1-84(c), especially if that employee is involved in the regulation of the sponsor or does business for the State with that sponsor. As stated above, the Ethics Commission has consistently held that, in general, the State should pay for state operations, activities, and functions, in order to avoid both actual and apparent conflicts of interest. Therefore, the certifying superior must be particularly cautious in making his or her determination that the employee's presence at the conference facilitates the execution of state business and that the State would ordinarily have sent this employee to the conference. If

the employee's superior determines that, in the course of his or her state job, the employee's relationship to the sponsor is a close one, and that the benefit that the State might receive from the employee's attendance at the conference might be outweighed by the harm to the State in the form of a sense of obligation or quid pro quo on the part of the state employee to the sponsor, certification should properly be denied.

6. Under Ethics Commission policy, the certifying agency should send a copy of the written certification described in the answer to question 1 to the Commission prior to the date(s) of the event. (This policy is in the process of being formalized in Commission regulations.) The Commission's intent in monitoring these certifications is not to second-guess the superior, but rather to ensure that individuals or companies which are regulated by or do business with the State are not abusing the "gift to the State" exception to the gift law. For example, the Commission would question the validity of the actions of a company which chooses to hold its annual conference in Florida (and pay for the attendance of state employees), despite having previously held such conferences in the Hartford area. The Commission will therefore review the certifications, and, if misuse is revealed, will reconsider its position, including possibly seeking new legislation and/or regulations.

Also, if the state employee or public official is required to file an annual statement of financial interest, he or she may accept a fee or honorarium, but must file a disclosure of any fee or honorarium in the amount of \$100 or more within thirty days after its receipt. See Conn. Gen. Stat. §1-83(b). As stated earlier, no other state employee may accept a fee or honorarium, so the filing requirements of §1-83(b) are not applicable.

By order of the Commission,



William A. Elrick
Chairperson

Dated 12 - 13 - 89

