

ADVISORY OPINION NO. 88-10

A legislator requested an opinion from the State Ethics Commission ("Commission") as to whether the legislator could accept an honorarium for a public speaking engagement at a conference sponsored by a private organization. The conference and the invitation to speak at the conference arose after the legislative session had ended, and the legislator was asked to speak on legislation she had worked on during the session. The conference planners invited the legislator to participate in the conference because she had been the chairperson of the legislative committee which developed the final legislation that was passed. The legislator was asked to give two fifteen-minute presentations on the legislation, and also on the lobbying activities, drafting, and negotiations related to the legislation. The location of the conference was not within the legislator's representative district. The private organization offered the legislator air and ground transportation to the conference and also offered her an honorarium to participate in the conference.

When the matter was first brought to the Commission for an initial impression, the Commission felt that the legislator's acceptance of air and ground transportation to the conference would not violate the State Ethics Code, chapter 84, Hawaii Revised Statutes ("HRS"). However, in regard to the honorarium, the Commission deferred rendering an opinion until the Commission's staff was able to further research the matter. After informing the legislator of the Commission's initial impression, the legislator informed the Commission's staff that in addition to the travel accommodations and honorarium, the legislator had been subsequently offered one night of hotel accommodations because the speakers were all flying in to participate in the conference and the conference would begin the following morning. Inasmuch as the Commission felt that the legislator's acceptance of travel accommodations was allowable under the ethics code, the Commission's staff informed the legislator that acceptance of the hotel accommodations also appeared to be reasonable under the circumstances.

In regard to the honorarium, the Commission reviewed the situation in light of HRS §84-13(2), which states as follows:

§84-13 Fair treatment. No legislator or employee shall use or attempt to use the legislator's or employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others; including but not limited to the following:

....

- (2) Accepting, receiving, or soliciting compensation or other consideration for the performance of the legislator's or employee's official duties or responsibilities except as provided by law.

HRS §84-13(2) prohibits the receipt of additional compensation for the performance of the legislator's official duties or responsibilities. The Commission thus reviewed whether this speaking engagement fell within the legislator's official duties or responsibilities as a legislator. If the speaking engagement did fall within the legislator's official duties or responsibilities as a legislator, acceptance of the honorarium would have been inappropriate.

In determining whether the speaking engagement fell within the legislator's official duties or responsibilities as a legislator, research involving the Constitution of the State of Hawaii, Hawaii Revised Statutes, and Hawaii case law was conducted in regard to whether a legal duty existed requiring that the legislator carry out the speaking engagement as a part of her official duties or responsibilities.

The Commission's staff consulted with both houses of the Legislature and learned that, occasionally, legislators will officially represent either the House of Representatives or the Senate at speaking engagements. When officially representing a house of the Legislature, the legislator would then carry out the speaking engagement as a part of the legislator's official duties or responsibilities.

The legislator's participation in the conference was not as the official representative of either the House of Representatives or the Senate. It appeared, therefore, that inasmuch as the speaking engagement did not fall within the legislator's official duties or responsibilities as a legislator, the legislator could accept the honorarium for her speaking engagement at the conference. For future speaking engagements, the legislator was advised that should a legal duty to accept speaking engagements on legislation be imposed upon legislators subsequent to the issuance of this advisory opinion, the legislator could consult with the Commission again if the legislator was offered and wished to accept an honorarium.

The Commission thanked the legislator for her concerns regarding the ethics code. Her sensitivity to the ethical issue involved was very much appreciated.

Dated: Honolulu, Hawaii, September 15, 1988.

STATE ETHICS COMMISSION
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