

SUBJECT: HONORARIA- MEDICAL CENTER PERSONNEL

SUMMARY:

Faculty members or hospital administrative staff are prohibited from accepting anything of value for giving speeches in their "official capacity". The sponsoring group may reimburse the employee's agency for associated costs and the agency may reimburse the employee in accordance with agency travel reimbursement policies. Such employees are not prohibited from receiving honoraria or expense reimbursement for speeches which are not within their "official capacity".

QUESTION:

The Attorney for Spartanburg Regional Medical Center questions whether medical personnel or administrative employees may receive payment for speaking. He advises that the Center is a teaching hospital with a faculty which, in addition to actual teaching duties, are sought for academic and scientific purposes to lecture at other hospitals or to other medical groups independent of the hospital. Administrative employees are also sought to lecture and make presentations at other hospitals and to medical groups in the advancement of hospital and medical care. The Attorney requests an assumption of the following facts: (1) that speeches will be on the speaker's own time, (2) the topics will not be the "official capacity" of the speaker, (3) the topic of the speech will not be for the purpose of advancing the employment position of the speaker, and (4) the audience will be a group which has a separate identity and organization from the hospital. He questions:

- (1) Shouldn't the "speaking engagements" referred to in Section 8-13-715 be interpreted not to include lectures of the medical faculty and administrative officers, under the conditions assumed?
- (2) Would not the above lectures or speeches be considered not "in an official capacity" so that those individuals could receive payment and expenses without being in violation of the act and without receiving prior written approval for out of state lectures?
- (3) May an administrative officer or employee of Spartanburg Regional Medical Center receive payment for speaking under the conditions assumed?
- (4) May a member of the medical teaching faculty of Spartanburg Regional Medical Center receive payment for lecturing under the conditions assumed above?

DISCUSSION:

This opinion is rendered in response to a letter dated March 3, 1992 requesting an opinion from the State Ethics Commission. The Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act No. 248 of 1991; Section 8-

13-100 et. seq., as amended, 1976 Code of Laws). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation.

In Advisory Opinions SEC AO92-057 and SEC AO92-100, the State Ethics Commission called attention to Section 8-13-715 which provides in part as follows:

A public official, public member, or public employee acting in an official capacity may not receive anything of value for speaking before the public or private group. Notwithstanding the limitations of Section 2-17-90, a public official or public member may receive payment or reimbursement for actual expenses incurred for a speaking engagement. The expenses must be reasonable and must be incurred in a reasonable time and manner in which to accomplish the purpose of the engagement. If the expenses are incurred out of state, the public official or public member incurring the expenses must receive prior written approval for the payment or reimbursement.

The Commission notes that the definition of "anything of value" includes an "honorarium or compensation for services". See Section 8-13-100(1)(a)(xii). The Commission does not believe acceptance of a meal received by a public employee, public official, or public member who is participating in an event where the same meal is served to all other persons attending or participating in the same event to be compensation for services or for speaking. Accordingly, a meal accepted under the above restrictions would not be violative of the Ethics Reform Act.

The Commission notes that "official capacity" is not defined in the Ethics Reform Act. For purposes of this Act, the Commission in Advisory Opinion SEC AO92-023 defined speaking engagements by public employees "in an official capacity" as those which (1) arise because of the position held by the employee, (2) involve matters which fall within the responsibility of the agency or employee, and (3) are services the agency would normally provide and for which the employee would be subject to expense reimbursement by the public employee's agency. Official capacity also means those duties that are attached to a public office or employment by the Constitution, statutes, executive order, promulgated rules and regulations, published job description or agency directive.

As to whether a faculty member or administrative employee is speaking on a matter which is not within their "official capacity" must be determined on a case by case basis concerning the nature and topic of the speech and the makeup of the audience.

The State Ethics Commission notes for clarification that "speaking before a public or private group" encompasses not only a traditional breakfast or luncheon speech but also more extended participation as speaker at a workshop, seminar, or training session or as a panel participant.

A public employee may make presentations or speeches and receive an honorarium on matters outside the employee's official capacity as defined above when (1) such are accomplished on

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the employee's own time, (2) no public materials or equipment are utilized, (3) it is not a part of the employee's position responsibilities, and (4) it does not interfere with the needs of the agency.

The Commission further advised that the group inviting the public employee could contract with the employee's agency to reimburse the employee's agency for the travel expenses. The employee could then be reimbursed by the agency in accordance with agency travel reimbursement policies and procedures.