



STATE OF CONNECTICUT

OFFICE OF STATE ETHICS

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Advisory Opinion No. 2012-7

June 21, 2012

Questions Presented:

The petitioner asks whether a staff member accompanying a public official to an event at which the public official is giving a speech may accept necessary expenses pursuant to General Statutes § 1-84 (k), if the staff member is providing essential support to the public official.

Brief Answer:

Yes. A staff member accompanying a public official to an event at which the public official is giving a speech may accept necessary expenses pursuant to General Statutes § 1-84 (k), if the staff member is providing essential support to the public official.

At its June 2012 regular meeting, the Citizen’s Ethics Advisory Board (“Board”) granted the petition for an advisory opinion submitted by Peter Lewandowski, Assistant General Counsel at the Office of State Ethics. The Board issues this advisory opinion on the date shown below in accordance with General Statutes § 1-81 (a) (3). The opinion interprets the Code of Ethics for Public Officials (“Ethics Code”)¹ and its regulations, is binding on the Board concerning the person who requested it and who acted in good-faith reliance thereon, and is based solely on the facts provided by the petitioner.

¹Chapter 10, part I, of the General Statutes.

Facts

Generally, a petitioner's facts are set forth in this section, but because the question presented is one of legal interpretation and there are no specific facts involved, the petitioner's question is presented instead:

Pursuant to General Statutes § 1-81 (a) (3) and Regs., Conn. State Agencies § 1-92-38, I hereby request an Advisory Opinion responsive to the following question. May a staff member who is accompanying a public official to an event in order to provide essential support (i.e., acting as an assistant to the public official) accept necessary expenses pursuant to General Statutes § 1-84 (k)? It should be assumed for purposes of this question that the public official is making a speech at an event and that the assistance received is of such nature that it is regularly provided back at the office and is crucial to the public official's performance of duties.

Analysis

A public official or state employee may accept payment or reimbursement of "necessary expenses"² "for an article, appearance or speech, or for participation at an event, in the public official's, spouse's or state employee's official capacity."³

As previously stated by this Board, a public official may accept "necessary expenses" *only* in consideration for some substantive official act rendered on his or her part."⁴ As the Board explained:

[U]nder General Statutes § 1-84 (k), a public official may accept payment or reimbursement of "necessary expenses" incurred in connection with one of four statutorily authorized activities performed in his or her official capacity: (1) an

²"Necessary expenses" is defined as "a public official's or state employee's expenses for an article, appearance or speech or for participation at an event, in his official capacity, which shall be limited to necessary travel expenses, lodging for the nights before, of and after the appearance, speech or event, meals and any related conference or seminar registration fees." General Statutes § 1-79 (q).

³General Statutes § 1-84 (k).

⁴(Emphasis in original.) Advisory Opinion No. 2008-2.

article, (2) an appearance, (3) a speech, or (4) participation at an event.⁵

Neither § 1-84 (k) nor its legislative history indicate what is meant by “participation.” This Board, citing State Ethics Commission (“SEC”) precedent, has previously defined “participation” to mean that “some substantive official activity” must take place and used the examples of “participation in a panel, presentation of an award.”⁶ The question here therefore is whether a staff member who attends an event with a public official in order to provide support is engaging in “substantive official activity.”

Both this office and its predecessor have issued informal staff opinions with respect to this question. For example, in a 2005 request from the Office of the Treasurer, the SEC was asked whether the Treasurer and a staff member (attending to lend support) may attend and receive necessary expenses for an event in New York City. A SEC attorney responded: “Commission staff has consistently held that a staff member who attends an event with a Constitutional officer as a working assistant may also be provided a ticket to the event as a necessary expense or a gift to the state. What is received should be reported for both individuals.”⁷ In 2011, this office was asked whether staff, including state troopers, may receive necessary expenses for attending an event at which the Governor acted as the principal speaker. Citing the 2005 staff opinion, the question was answered in the affirmative: “if the staffer and the troopers attend the event in their working capacities, then they may accept payment of necessary expenses”⁸

The federal Office of Government Ethics has reached a similar conclusion. In a 2010 memorandum, it addressed an exception to its lobbyist gift ban.⁹ The exception reads, “[a]ppointees may still accept offers of free attendance on the day of an event when they are speaking or presenting information in an official capacity....”¹⁰ The agency determined that the exception also applies to agency personnel “whose presence at the event is deemed essential under agency procedures to the speaker’s participation at the event. Examples could include

⁵Id., citing Advisory Opinion No. 95-18.

⁶Id. As explained by the former Commission, “to qualify under the ‘appearance’ or ‘participation at an event’ provisions of the law, some substantive official activity, e.g., participation in a panel, presentation of an award, etc., [is] required.” Advisory Opinion No. 95-18.

⁷Request for Advisory Opinion No. 3919 (2005).

⁸Request for Advisory Opinion No. 9367 (2011).

⁹United States Office of Government Ethics, DO-10-003, February 18, 2010.

¹⁰Id.

members of security details, a representative of the agency's public affairs division, or an aide to assist with a presentation."¹¹

This Board agrees with both the informal staff opinions and the Office of Government Ethics memorandum. If the staff member's presence is deemed essential under agency procedures to the speaker's participation at the event, then the staff member may also receive necessary expenses for participation at the event.

By order of the Board,

Dated : 6/21/2012

/s/David W. Gay
Chairperson

¹¹(Emphasis in original.) Id.