

February 9, 1995

## **Advisory Opinion 1995 - No. 2**

### **QUESTION**

Would it be appropriate for a member of the Legislature to accept payment of meals, lodging, and travel under the following circumstances:

1. The Discovery Institute, a nonprofit and nonpartisan "thinktank" concerned about a variety of public policy issues, has invited the member to attend a conference on "C.S. Lewis and Public Life, Exploring the Relationship between Faith and Politics" and to participate in a panel discussion with a former U.S. congressman and a nationally prominent political commentator on "How should Christians become involved in politics?"
2. The conference will be in Seattle and will be for two days. The Institute has offered to provide hotel rooms, meals, and travel expenses to conference speakers, including panelists. The Institute's payments for these expenses, on behalf of the member, will be more than fifty dollars. The member would not be paid an honorarium or receive any other compensation for participating in the conference.
3. The panel on which the member would participate will be one of five sessions conducted at the conference. The conference speakers will be composed of persons of diverse philosophical and theological viewpoints, varied involvement or association with public life, and who are either recognized as authorities on matters of faith or public policy issues or have received substantial attention in academia or the media for their positions or activity on these issues; and
4. The Institute's purpose for the conference is provide a vigorous and informative dialogue on the relationship between an individual's faith and his or her involvement in matters of political and public policy interest?

### **OPINION**

The answer to this question is that it would be appropriate for the member to accept payment of expenses under the circumstances stated in the question. The State Ethics Act contains detailed provisions defining and regulating "gifts" and "compensation." While the facts stated in the question do not clearly reveal which category the payment would be in, the Board finds that the member's acceptance of the payment would be permitted.

### **Gift Analysis**

While the State Ethics Act restricts members' acceptance of gifts<sup>1</sup>, the restrictions apply only to items that fall within the Act's definition of "gift." Therefore, the Board must first decide whether the payment of expenses described in the member's question would fall within the

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<sup>1</sup> With exceptions, members are barred from accepting gifts valued at more than fifty dollars (RCW 42.52.150). In this case, the member states that the expense payments would be more than fifty dollars.

definition.

The Act defines "gift" in RCW 42.52.010(9), as follows:

"Gift" means anything of economic value for which no consideration is given. "Gift" does not include: . . .

(b) Items related to the outside business of the recipient that are customary and not related to the recipient's performance of official duties.

. . .

(d) Payments by a . . . nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, [or] appearance . . . made in an official capacity. As used in this subsection, "reasonable expenses" are limited to travel, lodging, and subsistence expenses incurred the day before through the day after the event;

. . .

(f) Payment of enrollment and course fees and reasonable travel expenses attributable to attending seminars and educational programs sponsored by a bona fide nonprofit professional, educational, or trade association, or charitable institution. . . .

While the exclusions from this definition do not clearly encompass the circumstances in the opinion request, the Board believes that the Legislature probably intended that they do encompass them. This is particularly true with respect to item (d) which would exclude payment of a member's meal, lodging, and travel expenses incurred by the member "in connection with a speech . . . made in an official capacity."

The member's question does not reveal that the Institute's invitation was based on the member's legislative status or legislative activities. However, if it is, then a strong argument would exist that the member's participation would be in his or her "official capacity" and therefore be excluded from the definition of gift under item (d). Paragraph 3 of the question states that the conference speakers will be persons "who are either recognized as authorities on matters of faith or public policy issues or have received substantial attention in academia or the media for their positions or activity on those issues." This paragraph, when coupled with the fact that the member's topic would be "How should Christians become involved in politics," reveals a likelihood that the Institute's invitation was based on the member's legislative status or legislative activities.

Even if the member's participation in the panel were not deemed to be in his "official capacity," it is unlikely the Legislature intended the gift restrictions to apply. An interpretation that the exclusions do not apply to the member in this case would, as a result of item (d), mean that the new law's gift restrictions *would apply* to reimbursement of expenses for a member's participating in a panel in the member's purely private capacity but *would not apply* to reimbursement of expenses for the member's participating in a panel in the member's official capacity, such as for, example, where a member participates in a panel that concerns legislation and that is sponsored by a trade association. It is improbable that the Legislature intended this interpretation.

## Compensation Analysis

"Compensation" is defined in RCW 42.52.010(5) as "anything of economic value. . . ." "Thing of economic" value is defined in RCW 42.52.010(18) as follows:

"Thing of economic value," in addition to its ordinary meaning, includes . . . [a] property interest, interest in a contract or other chose in action, and employment or another arrangement involving a right to compensation . . . [or] promise or undertaking for the present or future delivery or procurement.

If the member's acceptance of the expense payments in this case were deemed to constitute "compensation" under these definitions, then the relevant rules governing compensation are as follows:

*RCW 42.52.110*: "No state officer or state employee may, directly or indirectly, ask for or give or receive or agree to receive any compensation . . . from a source except the state of Washington for performing or omitting or deferring the performance of any official duty, unless otherwise authorized by law."

*RCW 42.52.120*: ". . . No state officer or state employee may receive any thing of economic value under any contract . . . outside of his or her official duties. The prohibition in this subsection does not apply where each of the following conditions are met:

- (a) The contract . . . is bona fide and actually performed;
- (b) The performance or administration of the contract . . . is not within the course of the officer's or employee's official duties, or is not under the officer's or employee's official supervision;
- (c) The performance of the contract . . . is not prohibited by . . . applicable laws or rules governing outside employment for the officer or employee. . . .

Even if one assumes that the payment of expenses in this case would fall under the definition of "compensation," it seems clear under the facts stated in the member's question that the compensation restrictions would not bar the payment. With respect to RCW 42.52.110, the facts do not show that the payment would be for "performing or omitting or deferring the performance of any official duty." With respect to RCW 42.52.120, the facts do not show that the agreement with the Institute would be a sham or would not be performed, or that the member's participation would be within the course of his "official duties," or that performance of the contract would be "prohibited."

## CONCLUSION

The Board finds that the expense payments would not constitute "gifts" under the State Ethics Act's "gift" definition, and therefore would not be subject to the Act's restrictions on gifts, or that the payments would be permissible compensation, should they fall within the Act's definition of "compensation" and rules governing receipt of compensation. Therefore, we conclude that the member may accept payment of the expenses.