

June 23, 1995

Advisory Opinion 1995 - No. 10

QUESTIONS

Question (1): A legislator has asked the Board to decide whether the State Ethics Act would prohibit the members of the House Natural Resources Committee and legislative staff assigned to that committee from participating in a tour sponsored and conducted by a timber company that engages in lobbying activities. The circumstances of the tour, as offered by the company, would be as follows: Participants would have the opportunity to view the company's watershed analysis efforts and one of its timber production areas. The tour of the timber production area would illustrate the production cycle from planting seedlings to harvesting timber. The company believes that an aerial perspective would be especially informative and for that reason would provide for the participants' use of a helicopter. The company's cost for the helicopter, which would hold four participants at a time, would be approximately \$600 to \$650 per hour, and each flight would run between three and four hours of air time.

Question (2): So that the Board can provide additional guidance to legislators and legislative staff, the Board, on its own initiative, presents the following related question: Would the answer to Question (1) be any different if, instead of the committee members and staff being invited to attend the tour, the company's invitation were extended to a single legislator or single legislative employee?

OPINION

The State Ethics Act would not prohibit legislators or legislative employees from participating in the tour under the circumstances specified in Questions (1) and (2). However, legislators and legislative employees are advised to pay attention to the cautionary note provided in this opinion.

Question (1)

The State Ethics Act's standards of conduct apply to "state officers" and "state employees." These terms are defined to include legislators and legislative employees (RCW 42.52.010(16) and (17)). Under the circumstances in Question (1), we believe that any thing of value furnished to the committee members and legislative staff, given the purpose and nature of the tour, would be furnished to a government entity - that is, to the House Natural Resources Committee or to the House of Representatives - and not to "state officers" or "state employees."

The Board notes that under policies of the House of Representatives, standing committees of the House must obtain approval for their interim activities involving travel. Our answer to

Question (1) is based on our understanding that the tour would be approved by the House of Representatives. In reaching this conclusion, the Board acknowledges the House's important administrative role over the travel and educational activities of its committees.

Question (2)

If the company's payment of the tour expenses for the legislator or legislative employee is considered a "gift" under the "gift" definition in the State Ethics Act, then the fifty dollar limit applicable to "gifts" would prohibit the legislator or legislative employee from accepting the payment. See: RCW 42.52.010(9) and RCW 42.52.150.

The Board believes the payment would not be a "gift." The Act contains a number of exclusions from the "gift" definition, one of which we believe applies to this question. That exclusion, RCW 42.52.010(9)(d), is for:

Payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, *appearance*, or trade mission 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. . . . (Emphasis added.)

The Board interprets the word "appearance" as constituting authorization for participating in the tour.

We believe this interpretation is warranted under the circumstances. Under another exclusion, subsection (f), a member is expressly permitted to accept payment of ". . . reasonable travel expenses attributable to attending seminars and educational programs sponsored by a . . . trade association. . . ." It would unreasonable to conclude that, on the one hand, a member could participate in the tour if it were sponsored by a lobbying association composed of timber companies, which is what the trade association would probably be, but, on the other hand, could not participate if the tour were sponsored by an individual timber company, which may or may not be involved in lobbying activities. We simply do not see any difference between the association and the company that would be sufficient to warrant such disparate treatment.

This interpretation is also consistent with the intent expressed by the Commission on Ethics in Government and Campaign Practices, whose report was the basis for the State Ethics Act. The Commission states that:

There are instances in which the state may benefit from a transaction involving what has come to be [popularly] characterized as a "gift" and other instances in which such transactions may assist officials and employees in performing tasks appropriate to their positions.¹

¹ *Final Report of the State of Washington Commission on Ethics in Government and Campaign Practices*, p. 24 (1994).

We believe that the payment of the tour expenses under the circumstances specified in Question (2) would constitute a "transaction" or "transactions" within the meaning of this quote.

For the above reasons, we adopt this interpretation that would permit the timber company to provide the tour to a single legislator or legislative employee.

CAUTIONARY NOTE

The State Ethics Act, in RCW 42.52.140, provides as follows:

No state officer or state employee may receive, accept, take, seek, or solicit, directly or indirectly, any thing of economic value as a gift, gratuity, or favor from a person if it could be reasonably expected that the gift, gratuity, or favor would influence the vote, action, or judgment of the officer or employee, or be considered as part of a reward for action or inaction.

This provision, the "reasonable expectation" rule, applies to members' or legislative employees' participation in tours paid by lobbyists or lobbying organizations. Also, it applies regardless of whether the payment of the tour expenses are excluded from the "gift" definition.

Recently, in Advisory Opinion 1995 - No. 5, this Board commented favorably on an opinion of the former House Board of Legislative Ethics, House Advisory Opinion 1989 - No. 2, where the former board held that it would violate a very similar provision² in the former Code of Legislative Ethics for a member to participate in a tour of Prudhoe Bay and the Arctic National Wildlife Refuge under circumstances where the tour expenses would be paid by a lobbying organization interested in opening up the Refuge for oil and gas exploration and development.³ In that case, the former board was especially influenced by the significant expenses involved and the fact that the expenses would be paid by a lobbying organization.

Consistent with the "reasonable expectation" rule, we will continue to adhere to the former board's opinion. To the extent that the expensive nature of a tour creates suspicion, we

² *Rule 1(a) of the former Code of Legislative Ethics provided that a member "shall not accept a gift, favor or service under circumstances where it could be reasonably inferred that such action would influence the legislator in the discharge of legislative duties or was a reward."*

³ *The lobbying connection was that the legislator served on the Energy Committee of the National Conference of State Legislators (NCSL) and the organization that would have conducted the tour was lobbying the NCSL to support the passage of a federal law that would open up the Refuge for oil and gas exploration and development.*

will scrutinize the tour closely.⁴ Also, members and legislative employees participating in tours are advised that their acceptance of payment for items, services, or other benefits that are not reasonably necessary to carry out the educational purpose of the tours and that are paid by a person, or entity, with a lobbying purpose may very well result in a violation of this rule. We particularly caution them against accepting payment for their spouses' travel or lodging and for recreational activities, such as golf or tennis fees. Aside from possibly violating the "reasonable expectation" rule, the payment of these kind of expenses would very likely constitute a "gift" to which the fifty dollar limit would apply.

⁴ *In the tour addressed in this opinion, the expenses would be considerable, but not nearly as great per participant as the expenses in the Alaska tour. In the Alaska tour, the lobbying organization would have paid all travelling and lodging expenses involved in the trip to Alaska and in a four-day tour of Prudhoe Bay and the Artic National Wildlife Refuge. Another distinction is that while the facts presented here do not indicate that the timber company's purpose is to promote any specific legislation, the facts in the Alaska opinion show that the sponsor's purpose was to promote specific legislation.*