THE ETHICS REVIEW
A JOINT COMMISSION ON PUBLIC ETHICS NEWSLETTER

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Leaving on a jet plane (or, more likely, a train) ...

If you are a State employee who also holds an outside job, can you participate in a conference that is related to your outside employment, and have the sponsor of the conference pay for your travel expenses?

Consider this example:

You work for the Department of Agriculture and Markets, but also moonlight as a beekeeper. An agricultural membership organization that happens to be a registered lobbyist in New York offers to pay your hotel and airfare expenses for you to serve on a conference panel addressing issues in the beekeeping industry. You may think to yourself, “I don’t work for the part of my agency that regulates beekeeping, so this offer has nothing to do with my State job. I should be in the clear.” But hold on, don’t pack your bags just yet. There are still ethics rules that may apply.

An honorarium is a payment or other form of compensation that is offered to a public employee for performing a professional service or activity that is not part of the employee’s official duties. Examples of a service or activity can include participating in a panel discussion for a conference, giving a speech, or writing an article. Honoraria may also include payment or reimbursement of expenses incurred for travel, lodging, and meals related to the service performed

Pursuant to JCOPE’s regulations, State officers and employees must submit a written request for approval to their agency’s Ethics Officer *before* accepting an honorarium and performing the service or activity. Statewide elected officials and State agency heads submit their requests for approval to accept an honorarium directly to JCOPE.

Your agency’s Ethics Officer will examine the request by considering the conditions for approval laid out in the regulations. Any honorarium from an “interested source” will probably be prohibited. An interested source is generally a person or entity, including a registered lobbyist or client, that may have a private interest in seeking to influence an action or decision of your agency. An honorarium from a non-interested source may also be prohibited if it would give rise to an appearance of a conflict of interest. Finally, any honorarium accepted must not violate Public Officers Law § 74, the statute that prohibits actual or perceived conflicts of interest.

In the example above, the membership organization is an interested source if it directly lobbies the Department of Agriculture and Markets. In that case, the Ethics Officer should advise the employee that accepting the honorarium is presumptively prohibited. It is possible to overcome this presumption if, based on the circumstances, it is not reasonable to infer that a conflict exists. For instance, an employee may be able to overcome the presumption that the honorarium is prohibited if the nature of the employee’s job is unrelated to the interested source’s business with the agency. Your agency’s Ethics Officer is your first resource for honorarium-related questions and will be the individual approving or denying your request. As always, JCOPE attorneys are also available to discuss how the ethics laws may apply to your circumstances.

Finally, it is also important to remember honoraria when it comes time to file your annual Financial Disclosure Statement (“FDS”). Payments received in excess of $1,000 (or an aggregate total exceeding $1,000 received from a single offeror) must be reported on your FDS.

Dear JCOPE

I'm required to file annual Financial Disclosure Statements ("FDS"), and I recall attending ethics training when I first became a filer. How often do I need to attend ethics training, and how do I find out when I'm due?

Dear FDS Filer,

On-going ethics training is an important part of your responsibility as an FDS filer. Your primary training obligation is taking the Comprehensive Ethics Training Course ("CETC"). Once you have completed the CETC, you are subject to refresher training every three years thereafter. To find your training status, you should reach out to your agency's Ethics Officer, who should be offering ethics training classes for FDS filers at your agency.

Please note that, unrelated to JCOPE's ethics training, the Governor's Office of Employee Relations ("GOER") has also recently launched a separate online ethics class for State employees. You may, however, opt out of GOER's ethics class in the years when you will complete JCOPE's ethics classes for FDS filers. You should contact GOER directly for more information about this new requirement.

ENFORCEMENT ACTIONS:

Financial disclosure: A former employee at the Metropolitan Transportation Authority ("MTA") admitted to violating the ethics law when he failed to disclose income earned over a two-year period from an outside job with an elevator consulting company, a job the MTA had previously instructed him to leave. The former employee agreed to pay a $4,000 fine, resigned from the MTA, amended his Financial Disclosure Statements, and admitted to a violation of the Public Officers Law§73(a).

Gift: An assistant facilities project coordinator at the SUNY Downstate Medical Center at the Bay Ridge facility admitted to violating the ethics law when he accepted payments in the amount of $3,000 over two years from a vendor. The State employee received payments while his State responsibilities included coordinating with the vendor's employees to maintain the facility. The State employee understood the payments were in recognition of performing his official duties in managing the SUNY facility. The employee agreed to pay a $4,000 fine, resigned from SUNY, and admitted to violating the Public Officers Law. Public Officers Law § 73(5)(a) prohibits a State employee from soliciting, accepting, or receiving a gift having more than nominal value where it could reasonably be inferred that the gift was intended to influence or could be expected to influence the performance of one's official duties or as a reward for an official action.

Code of conduct: A New York City Transit Authority employee admitted to violating the ethics law when he sought assistance from an employee of the human resources department to change the requirements to fill a job vacancy so that a former co-worker's son would qualify for the position. The former co-worker's son initially was deemed not qualified but eventually was hired by the Transit Authority after the job requirements were lowered. The employee agreed to resign, forfeited approximately $40,000 in payments for accrued leave, and admitted to violating the Public Officers Law. Public Officers Law § 74(3)(d) provides that no State employee should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself, herself, or others.

Questions about Ethics rules?

Contact JCOPE at legal@jcope.ny.gov or

800-87-ETHICS (873-8442) – press 2