

Advisory Opinion 2022-10

Issued on April 7, 2022, by

The West Virginia Ethics Commission

Opinion Sought

A **County Assessor** asks whether he may accept an honorarium from a professional Association to cover travel-related expenses for being an instructor or attendee at a conference.

Facts Relied Upon by the Commission

The Requester has been invited to attend and serve as an instructor at a conference being held by a professional association at its headquarters located outside of the state. The conference will last four days. The Association is a nonprofit organization that has 8,500 members from around the world representing government entities and business and academic communities. The Association's mission is to advance fair and equitable property appraisal, assessment, and policy through professional development and technical assistance.

The Requester has been a member of the Association and has attended its conferences for years. The County Assessor's Office pays the Requester's annual membership dues of \$225.

The Requester states that his participation at the conference is not required by law. He states that there is, however, significant benefit to the County and state from his involvement in the Association. Over the years, he has gained invaluable knowledge on matters that are directly related to his public job duties and responsibilities. He has also been made aware of the national, state, regional, and local trends impacting the valuation of property through continued communication and networking with experts across the country. His involvement with the Association has resulted in more accurate and uniform assessments in his County and has increased the County's revenues. Finally, his membership has prepared him to more effectively interact with taxpayers and to defend his Office's valuations of properties before the County Board of Assessment Appeals, the Office of Tax Appeals, and courts of law.

The Requester is currently the only assessor in the state who holds the credentials to instruct courses offered by the Association. The Association's Instructor's Handbook provides the application process for becoming an instructor, which includes submitting a resume, passing exams, passing a trainee program, and giving an oral presentation. The Instructor's Handbook dictates the educational requirements and amount of experience required, a code of conduct for instructors, and rules on how to maintain instructor status, which include annual reviews.

According to the Association's Instructor's Handbook, instructors are entitled to "honorariums" based on a set fee schedule. The honorariums are based on the qualifications of an instructor and length of a conference. For example, a regular instructor is to be paid a flat fee of \$2,650 for a four-day workshop. The Requester states that the honorarium reflects the full value of his services. The Association's policy specifically excludes reimbursing instructors for travel and other related expenses.

The instructor and the Association would enter into a contract that states that the instructor is an independent contractor and sets forth the amount of compensation and other terms of the work. The Association issues 1099 to the instructors for payments made to them.

The Requester asks whether he may accept the honorarium to the extent it covers his travel-related expenses at the conference. He further asks whether these travel expenses may, in the alternative, be paid by the County Assessor's Office.

Code Provisions Relied Upon by the Commission

W. Va. Code § 6B-2-5(c)(3) provides, in relevant part:

The commission shall, through legislative rule promulgated pursuant to chapter 29A of this code, establish guidelines for the acceptance of a reasonable honorarium by public officials and elected officials. The rule promulgated shall be consistent with this section.

W. Va. Code R. § 158-7-2 provides, in relevant part:

2.1. For the purpose of this section, the term "honorarium" means payment given in recognition of published works, appearances, speeches and presentations which is not intended as consideration for the value of such services. These payments are not legally or traditionally required such as in an employment contract.

2.2. Any elected public official may accept an honorarium only when: (A) That official is a part-time elected public official; (B) The fee is not related to the official's public position or duties; (C) The fee is for services provided by the public official that are related to the public official's regular, nonpublic trade, profession, occupation, hobby, or avocation; and (D) The honorarium is not provided in exchange for any promise or action on the part of the public official.

W. Va. Code R. § 158-7-3 provides, in relevant part:

3.1. A public official or public employee may accept from an interested third party a reduced rate for or free admission to a privately sponsored conference or seminar, and reimbursement for reasonable meals, travel and lodging expenses, if his or her attendance will result in benefit to the

governmental agency he or she serves by enhancing his or her job related skills and the performance of his or her public job responsibilities under each of the following:

- a. Attendance by the public official or employee must fulfill an existing agency need by significantly enhancing the attendee's occupational skill or knowledge to provide important information needed by the agency to meet its official mandate;
- b. The seminar or conference must be appropriate for the proposed attendee. A trip is appropriate for the attendee if he or she will use the information or job skill enhancement and is the person most suitable to acquire and transfer the skills or information to other appropriate agency personnel;
- c. The site of the proposed trip must be appropriate. A public employee or official may not accept payment for attendance at the seminar or conference and related costs if the same information is readily available locally;
- d. The seminar or conference must offer a reasonable return on the time spent. Attendance at the seminar or conference should represent a reasonable investment of the public official or employee's time when weighed against the information acquired or the degree of improvement in job skills or knowledge; and
- e. The benefit to the agency must be significantly greater than the incidental benefit to the traveler....¹

¹ The Rule further states:

3.4. Food and lodging expenses are "reasonable" if the expenses are limited to the usual and customary basic charges of the hotel and are comparable to those charged to other participants and hotel guests. Travel expenses are "reasonable" if the expenses are comparable to those ordinarily charged to other similar travelers.

3.5. A public official or public employee may not accept payment or reimbursement for other expenses such as golf fees, carriage rides or health club fees if the total value of the fees exceeds twenty-five dollars (\$25.00) unless these amenities are normally part of the standard hotel room charge and incidental to the use of the hotel room.

3.6. A public official or public employee may not accept payment from an interested third party for food, lodging or travel expenses for a guest; Provided, That, a public official or public employee may take a guest to a privately sponsored seminar if no additional costs are incurred by the third party payer for the guest's travel, lodging or attendance at the seminar.

W. Va. Code § 6B-2-5(h) provides, in relevant part:

(h) Employment by regulated persons and vendors. - (1) No full-time official or full-time public employee may seek employment with, be employed by, or seek to purchase, sell or lease real or personal property to or from any person who:...

(C) Is a vendor to the agency where the official serves or public employee is employed and the official or public employee, or a subordinate of the official or public employee, exercises authority or control over a public contract with such vendor, including, but not limited to: (i) Drafting bid specifications or requests for proposals; (ii) Recommending selection of the vendor; (iii) Conducting inspections or investigations; (iv) Approving the method or manner of payment to the vendor; (v) Providing legal or technical guidance on the formation, implementation or execution of the contract; or (vi) Taking other nonministerial action which may affect the financial interests of the vendor.

(2) Within the meaning of this section, the term “employment” includes professional services and other services rendered by the public official or public employee, whether rendered as employee or as an independent contractor; “seek employment” includes responding to unsolicited offers of employment as well as any direct or indirect contact with a potential employer relating to the availability or conditions of employment in furtherance of obtaining employment; and “subordinate” includes only those agency personnel over whom the public official or public employee has supervisory responsibility.

Advisory Opinion

Many provisions of the Ethics Act must be considered in answering the Respondent's question. Each one will be addressed separately.

Honorarium

The Ethics Act contains a provision addressing when it is acceptable for a public employee or official to accept an honorarium. W. Va. Code § 6B-2-5(c)(3). (For the restrictions on accepting honorariums see W. Va. Code R. § 158-7-2.2 above.)

For purposes of the Act, “honorarium” means payment given in recognition of published works, appearances, speeches and presentations which is not intended as consideration for the value of such services. These payments are not legally or traditionally required such as in an employment contract.” W. Va. Code R. § 158-7-2.1 The definition of “honorarium” in Black Law's dictionary is:

1. A payment of money or anything else of value made to a person for services rendered for which fees cannot legally be or are not traditionally paid.
2. A voluntary reward for that for which no remuneration could be

collected by law; a voluntary donation in consideration of services that admit of no compensation in money

Honorarium, Black's Law Dictionary (11th ed. 2019).

The Commission discussed the definition of “honorarium” in Advisory Opinion 1990-62, finding that \$250 paid to a Delegate from an Association was payment issued for his administrative work pursuant to a “quasi-employment contract” and not associated with or influenced by the Legislator’s public office. The Commission concluded that although the Association “... describes this payment as an honorarium, it does not fall within the definition of such....”

Likewise here, although the Association characterizes the payments given to its instructors as an “honorarium,” for purposes of the Ethics Act, the payment is not an honorarium because the Requester enters into a legally binding contract for payment for work as an independent contractor. The instructors must apply for the work through a rigorous application process and teach a course to receive the money. The payment represents the full value of his services.

The Ethics Commission holds that the Association's payment to its conference instructors is not an honorarium under the Ethics Act. Therefore, the restrictions and limitations relevant to honorariums, in W. Va. Code § 6B-2-5(c)(3) and W. Va. Code R. § 158-7-2, are not applicable to the payment to the Requester for his services as a course instructor for the Association.

Accepting Free Travel-related expenses

The Ethics Act contains a provision, at W. Va. Code § 6B-2-5(c), prohibiting public officials and employees from accepting gifts from public agency vendors.² There are exceptions to this general prohibition. One exception is provided in the Legislative Rule concerning gifts, at W. Va. Code R. § 158-7-3. It provides when it is acceptable for a public employee or official to accept free travel-related expenses from a vendor. The Rule states, and the Commission has ruled, that a public servant may accept free travel and other expenses related to attending events if the attendance would significantly benefit the traveler’s agency and the public resulting from an increase in the traveler's job knowledge and skill. See Advisory Opinions 1998-18, [2004-28](#), and [2011-13](#). The Rule allows a public servant to accept free travel or reimbursement and other expenses from a vendor for attending a conference if the conditions in the relevant Legislative Rule, at W. Va. Code R. § 158-7-3 (a) through (f), are met.

First, the attendance “must fulfill an existing agency need by significantly enhancing the attendee’s occupational skill or knowledge to provide important information needed by the agency to meet its official mandate.” W. Va. Code R. § 158-7-3.1(a). Second, the public servant must “use the information or job skill enhancement and is the person most suitable to acquire and transfer the skills or information to other appropriate

² The Association is a vendor of the County Assessor’s Office because it pays the Association \$250 in annual membership dues.

agency personnel.” *Id.* at (b). Next, the conference “must offer a reasonable return on the time spent” and “[t]he benefit to the agency must be significantly greater than the incidental benefit to the traveler.” *Id.* at (d) and (e). The Requester states that his attendance at past conferences has increased his skill and knowledge in his public position by increasing the accuracy of his Office’s assessments and revenue to the County. The Commission therefore finds that these conditions are met.

Finally, the site of the proposed trip must be appropriate, and the information must not be readily accessible locally. *Id.* at (c). The Association’s headquarters is an appropriate site for an international association to hold a conference.

The Commission holds that the conference meets the five-part test established by W. Va. Code R. § 158-7-3.1(a) though (e).³ Therefore, the Requester may permit the Association to pay for or reimburse his travel-related expenses for attending the conference. Since the Association’s policy prohibits it from directly paying for travel-related expenses, the Requester may use the compensation for his services, which the Association categorizes as an “honorarium,” to pay for these expenses.

Prohibited Employment by Vendor

Although the Requester has not asked whether he may accept compensation from the Association that exceeds his travel-related expenses, the Commission will address the issue. The Ethics Act contains a provision that prohibits a full-time public employee or official being employed by a vendor. W. Va. Code § 6B-2-5(h)(1). An independent contractor is an employee for purposes of this provision. W. Va. Code § 6B-2-5(h)(2).

Based on the plain language of this provision, W. Va. Code § 6B-2-5(h)(1), the Requester may not receive and keep compensation from the Association in excess of his travel-related expenses.⁴

The Requester may, however, accept the full amount of compensation from the Association for serving as an instructor and donate the amount that is in excess of his travel-related expenses to his public office. See Advisory Opinion 1990-191 (holding that donating a charitable contribution to a charitable organization in the name of a public official, in lieu of an honorarium, is permissible since this would not result in pecuniary benefit to the official).

³ Because the Requester is also serving as an instructor at the conference, acceptance of reasonable travel expenses may also be permitted by W. Va. Code R. § 158-7-5. Reasonable Expenses for Panelist or Speaker. The Ethics Commission declines to analyze this particular rule here. Such an analysis would be purely academic as the Ethics Commission has already found the travel expenses to be reasonable as an attendee of the conference.

⁴ Based on the facts presented, the acceptance of compensation as reimbursement for travel expenses is not the type of compensation contemplated by W. Va. Code § 6B-2-5(h) because the travel expenses are related to the Requester’s public position.

Payment by the County for travel-related expenses

Finally, the Requester asks whether these travel-related expenses for attending the conference may, in the alternative, be paid by the County Assessor's Office. In [Advisory Opinion 2012-50](#), the Ethics Commission stated, "In determining whether an expenditure of public funds violates the Ethics Act, the Commission relies upon the common law, West Virginia Code, Legislative Rules, Attorney General Opinions and opinion letters issued by the Auditor's Office to determine whether there is express or implied authority for the expenditure." In [Advisory Opinion 2018-02](#), the Commission stated:

If a public official or public employee makes an unauthorized expenditure, it may constitute the unlawful use of office for private gain if the overriding benefit is to the public official or employee, or another person, and not to the government agency. The Commission held in Advisory Opinion 2016-09 that "the Ethics Act permits the expenditure of public funds if there is a legitimate government purpose for the expenditure." Advisory Opinion 2015-12, *citing* Advisory Opinion 2012-27.

The Requester states that his attendance at past conferences has increased his skill and knowledge in his public position by increasing the accuracy of his Office's assessments and revenue to the County. Therefore, there is an overriding public benefit that justifies the County paying these expenses.

The Commission holds that the Ethics Act does not prohibit the County Assessor's Office from paying for the travel-related expenses for the conference as an alternative to the Requester accepting this payment from the Association.

The Commission notes that County Assessors are full-time elected officials, pursuant to W. Va. Code § 7-7-4. The Ethics Commission does not have authority to interpret this Code provision.

This Advisory Opinion is based upon the facts provided. If all material facts have not been provided, or if new facts arise, the Requester must contact the Ethics Commission for further advice as it may alter the analysis and render this Opinion invalid. This Advisory Opinion is limited to questions arising under the Ethics Act, W. Va. Code §§ 6B-1-1 through 6B-3-11, and does not purport to interpret other laws or rules.

In accordance with W. Va. Code § 6B-2-3, this Opinion has precedential effect and may be relied upon in good faith by public servants and other persons unless and until it is amended or revoked or the law is changed.


Robert J. Wolfe, Chairperson
West Virginia Ethics Commission