

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 93 - 13

July 8, 1993

RE: Whether a merit employee may (while on annual leave from the job) make a presentation and receive expenses and an honorarium from the group to whom the presentation is made

This letter is in response to a request for an advisory opinion, made first in an unsigned letter dated March 26, 1993. The Commission at its April 2, May 10 and June 7 meetings requested more information, some of which was not provided in a timely manner. After further discussion at its July 8, 1993 meeting, the Commission issues the following opinion.

The relevant facts now provided to the Commission are as follows. A state official who supervises aspects of the Family Resource and Youth Services Center ("FRYSC") program under the Kentucky Education Reform Act was invited to speak on the Kentucky FRYSC program at a meeting sponsored by the Iowa Department of Education and other agencies on April 19 and 20, 1993. The official used leave time to attend and received a \$1,000 honorarium plus travel expenses from the sponsors.

KRS 11A.040(5) provides:

No public servant shall knowingly accept compensation, other than that provided by law for public servants, for performance of his official duties without the prior approval of the Commission.

In early April, the requestor telephoned Steve Reed, deputy general counsel in the governor's office, who provides legal advice to the Commission, as to whether the requestor should attend the event and receive the honorarium and expenses. Mr. Reed relayed this question by telephone to Commission Chairman Livingston Taylor. At the time, the Commission had not received much of the information it now possesses.

The chairman told Mr. Reed that, while he was not speaking for the full Commission and reserved the right to change his opinion after receiving more information, it was allowable for the requestor to attend and receive the honorarium and expenses. The chairman raised the possibility that the Commission might require the requestor to return the honorarium. The essence of this conversation was relayed to the requestor by Mr. Reed. At the time, the chairman took into consideration a statement in the March 26 request that the requestor's supervisor did not consider the speech to be a part of his official duties. In retrospect, the chairman erred in expressing his opinion before the Commission had received more complete information.

Information received after the speech indicates that the requestor was performing part of his official duties. His Position Description says that part of his job is to "make

presentations and meet with national, state, local and foundation representatives concerning FRYSC program and issues." In addition, a statement from the requestor's supervisor indicates that it was decided to have the requestor attend on personal time because "if he were allowed to make the trip in his capacity as a state employee, he would have accrued enough compensatory time hours to place him beyond the 200-hour limit" set by Cabinet policy.

In that the out-of-state presentation now appears to have been part of the requestor's official duties, the Commission is of the opinion that the requestor should not retain the \$1,000 honorarium, and his agency should pay or provide compensatory leave for his personal time spent on preparing for and attending the event. The \$1,000 may be refunded to the Iowa sponsors or paid to the Kentucky State Treasurer. The requestor and his agency are advised to provide the Commission with documentation that they have complied with the above.

The Commission does not consider the expense money in this case to be "compensation," and thus does not call for its refund, particularly in light of the fact it came from a governmental agency which apparently does no business with and is not regulated by the requestor's agency.