

ADVISORY OPINION 97-29

December 16, 1997

RE: May director accept honorarium and donate it to a charitable organization?

DECISION: Not if part of the director's official duty to speak at the educational program for which honorarium was received.

This opinion is in response to your November 26, 1997, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 16, 1997, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The director of the Managed Care Project Team within the Department of Medicaid Services has been asked by a for-profit company, which presents educational seminars to speak at one of the company's programs. An honorarium has been offered for his services. You ask whether the director may accept the honorarium and donate it to a charitable organization. You have reviewed Advisory Opinion 96-33 in which the Commission opined that the Secretary of Health Services could not accept an honorarium for speaking on health-care related issues. However, you believe that this situation is different in that the director is a merit employee in a non-policy making position and the honorarium is from a business which conducts educational seminars and not from an organization affiliated with a medical or hospital association.

11A.040(5) provides:

(5) 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 Advisory Opinion 93-19 (a copy of which is enclosed), the Commission disapproved of an employee receiving outside compensation for his participation in educational events that appeared to involve the same subject matters that he regularly handled in his state job. It appeared to the Commission that the employee was invited to speak at the seminar because of her official position in state government. Similarly, in this situation, the director appears to have been asked to speak for the educational company because of his position in state government. Thus, the Commission believes that unless the director will be speaking on matters unrelated to his position in state government or it is not part of the director's duties to educate the public about the Manage Care Project, he should not accept the honorarium for speaking even if the honorarium will be donated to a charitable organization.

However, the company is not prohibited from making a donation directly to a charitable organization, as long as the director does not benefit from the donation such as receiving a tax benefit.

Enclosure: AO 93-19