

## ADVISORY OPINION 98-40

December 17, 1998

RE: May former employer pay attorney's fees for litigation of state employee?

DECISION: Yes, if employee's agency does not regulate or do business with the former employer.

This opinion is in response to your November 6, 1998, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 17, 1998, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. An officer of state government is a party to litigation, including Section 1983 litigation, which arose out of the officer's work for a private sector employer prior to the officer's employment with state government. You ask whether the officer may allow the prior employer to pay the attorney's fees in the litigation if:

- 1) the litigation involves issues of importance to the prior employer;
- 2) the officer's participation in the litigation is necessary to obtain judicial review of those issues, in the opinion of counsel;
- 3) the issues under litigation have no bearing on the officer's official duties in state government;
- 4) the officer exerts no regulatory authority in state government over the prior private sector employer;
- 5) the private sector employer does not contact nor do business with state government; and
- 6) the prior private sector employer's policy is to pay attorney's fees for all prior employees in work-related litigation (i.e., the officer is treated the same as all other former employees, and is not being given special consideration.)

House Bill 275, passed during the 1998 session of the General Assembly, provides, in part, the following regarding the acceptance of gifts and gratuities:

- (1) No public servant, his spouse, or dependent child knowingly shall accept tangible gifts or gratuities with a value greater than twenty-five dollars (\$25) in a single calendar year, or travel expenses, meals, alcoholic beverages, lodging or honoraria of any value, from any person or business that does business with, is regulated by, is seeking grants from, is involved in litigation against or is lobbying or attempting to influence the actions of the agency in which the public servant is employed or which he supervises, or from any group or association which has as its primary purpose the representation of those persons or businesses. The following items are exempt...

This newly enacted legislation prohibits an officer in state government from accepting a gratuity from any person or businesses that is doing business with, is regulated by, is seeking grants from, or is attempting to influence the actions of the state agency for which the officer works. Based on the information provided to the Commission, it does not appear that the officer's former employer is doing business with, or is regulated by, the state agency for which the officer is now employed. Provided the officer's former employer is not seeking grants or attempting to influence any actions of the state agency for which the officer is now employed, the Commission believes that the officer may accept the payment of attorney's fees from the former employer.

If, however, the officer's former employer is regulated by or is seeking to do business with or to influence the state agency for which the officer works, the officer may be prohibited from accepting the payment for the fees. The Commission advises that it would need additional information to render an opinion in such a situation.