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THE JOINT LEGISLATIVE ETHICS COMMITTEE

Advisory Opinion 96-002
January 25, 1996

Syllabus by the Committee:

- (1) A law firm, where a member of the General Assembly is the sole proprietor, is not prohibited from entering into a contractual agreement with another private entity for the performance of services;
- (2) A member of the General Assembly is not prohibited from receiving compensation, through his law firm, for the performance of services where the services are not the giving of a speech, unless the speech is customarily provided in connection with the practice of a bona fide business, if that business initially began before the member conducting that business was elected or appointed to his office;
- (3) A member of the General Assembly is not receiving an honorarium in violation of R.C. 102.03(H) where the member is a non-compensated trustee and president of a foundation which sponsors a tuition-required seminar at which the member is a speaker.

Jurisdiction and Question Presented

Pursuant to sections 101.34 and 102.08 of the Revised Code that direct the Joint Legislative Ethics Committee to act as an advisory body to the members and employees of the General Assembly on questions relating to ethics, conflicts of interest, and financial disclosure,

the Joint Legislative Ethics Committee advises the members of the General Assembly on the following question: (1) Can a member of the General Assembly, through his law firm, provide legal and consulting services for a non-profit corporation; (2) Can a member of the General Assembly be compensated for services rendered by his law firm involving educational programs; and (3) Can a member of the General Assembly be associated with a foundation that sponsors seminars where a fee is charged for the seminar and the member is a speaker at the seminar?

Background

The Empowerment Foundation ("Foundation") is an Ohio non-profit corporation that was founded in 1993. The Foundation's mission is to empower individuals by sponsoring educational programs that promote free enterprise, good government and individual responsibility. The Foundation has been granted tax exempt status by the Federal Government. The Foundation has three trustees, one of whom is the member of the General Assembly; the member is also the president of the Foundation. The Foundation does not accept funding from any governmental entity but does accept tax deductible donations from corporations and individuals. Currently the Foundation promotes the following three educational programs: Earning by Learning, Camp Lemonade Stand, and Continuing Legal Education (CLE) seminars. As trustee and president of the Foundation, the member receives no compensation.

With regard to the CLE seminars, the Foundation has retained the member's law firm for the purpose of developing seminar curriculum and marketing these seminars in the Ohio legal community. The member is the sole proprietor of his law firm. The law firm's fee for this service is one-half of any net profits. Unlike the participants of Earning by Learning or Camp Lemonade Stand, attorneys who register for the CLE seminars are charged tuition. The compensation agreement entered into between the Foundation and the member's law firm was ratified by the remaining trustees, the member did not participate in the decision. The member, as well as other members of the General Assembly, participate as speakers at the CLE seminars. Speakers are not directly compensated for their participation in the seminar.

In addition to curriculum development and marketing services, the Foundation has retained the member's law firm to perform general consulting services at a set rate per month.

This fee includes performing all legal work required by the Foundation except matters involving litigation or tax audits. This fee also includes consulting with the Foundation towards the management and promotion of its Earning by Learning or Camp Lemonade Stand educational programs.

Consideration of the Issues

R.C. 102.03(H)

The member's involvement with the CLE seminars is three-fold. First, the member is associated with the Foundation which sponsors of the seminars, second, his law firm contracts with the Foundation for services relating to the seminars, and third, the member is a participant in the seminars as a speaker. With the passages of H.B. 492, the acceptance of any payment made in consideration of any speech given was prohibited. R.C. 102.03(H) states in part:

No public official or employee,...who is required to file a financial disclosure statement under section 102.02 of the Revised Code shall solicit or accept, and no person shall give to that public official or employee, an honorarium.

The member, for his participation as a speaker at the CLE seminars receives no *direct* compensation. However, it must be determined whether the member is actually being compensated given the relationships between the member, his law firm, and the Foundation.

Relative to the member's law firm, nothing in the Revised Code limits the ability of the law firm to enter into a contractual relationship with another private entity for the performance of services. However, because the member is the sole proprietor of the law firm, the member may be limited in his ability to accept compensation in certain circumstances from the Foundation. An honorarium is defined as "any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or similar gathering." R.C. 102.01(H). Because the member is the sole proprietor of his law firm, it could be argued that since the law firm is receiving a fee, the member is actually being paid, receiving an honorarium, for his participation in the seminars. However, the services for which the law firm has been retained and a fee paid, do not fall within the definition of an honorarium.

Here, the law firm will be paid a fee for the development of seminar curriculum, marketing, and providing general legal advice for the Foundation. Therefore, even assuming the member is being directly compensated by the Foundation because he is a sole proprietor, he is not being compensated for "any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or similar gathering." Thus, the member is not receiving an honorarium in violation of R.C. 102.03(H). However, the member is cautioned that he should maintain sufficient records indicating the services rendered pursuant to the contract.

Next, through the member's association with the Foundation as a trustee and president, it must be determined whether the member is receiving an honorarium for his participation as a speaker at the seminars. The Foundation charges a fee for attending the CLE seminars in order to provide the funding for the Earning by Learning and Camp Lemonade Stand educational programs it also sponsors. The Foundation provides no compensation or fee to any person participating as a speaker at the seminars. However, again it can be argued the member is indirectly receiving an honorarium through the Foundation if he is compensated for his services as a trustee or president. As noted above, the member is not receiving any compensation from the Foundation for his services as trustee or as president; therefore, the member is not receiving a fee indirectly for his participation as a speaker at the CLE seminars. Thus, the member, through his association with the Foundation and his participation as a speaker is not receiving an honorarium in violation of R.C. 102.03(H).

Furthermore, the Committee advises the member that he may not reference his status as a member of the General Assembly in connection with any of his businesses or endeavors outside of the General Assembly where he is attempting to promote the business or endeavor. For example, the member may not use his title (Senator or Representative) on letterhead, business cards, in advertisements or have the title used in any other type of medium.

Conclusion

Accordingly, the Joint Legislative Ethics Committee finds, and the member is so advised, that: (1) A law firm, where a member of the General Assembly is the sole proprietor, is not prohibited from entering into a contractual agreement with another private entity for the

performance of services; (2) A member of the General Assembly is not prohibited from receiving compensation, through his law firm, for the performance of services where the services are not the giving of a speech, unless the speech is customarily provided in connection with the practice of a bona fide business, if that business initially began before the member conducting that business was elected or appointed to his office; and (3) A member of the General Assembly is not receiving an honorarium in violation of R.C. 102.03(H) where the member is a non-compensated trustee and president of a foundation which sponsors a tuition-required seminar at which the member is a speaker.

This Advisory Opinion is based on the facts presented. It is limited to questions arising under Chapter 102, and Sections 2921.42 and 2921.43 of the Revised Code and does not purport to interpret other laws or rules.


William G. Batchelder, Chairman
Joint Legislative Ethics Committee