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**THE JOINT LEGISLATIVE ETHICS COMMITTEE**

Advisory Opinion 96-004  
June 25, 1996

**Syllabus by the Committee:**

A member is not prohibited, pursuant to R.C. 102.03(H), from receiving compensation for speaking or attending a meeting where the speech or attendance is incidental to the member's *bona fide* employment or association.

**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 and employees of the General Assembly on the following question: Is a member of the General Assembly strictly prohibited, pursuant to R.C. 102.03(H), from receiving compensation for presenting any speech or attending any meeting?

**Background**

With the passage of Am. Sub. H.B. 492, the General Assembly, in R.C. 102.03(H), prohibited the solicitation and acceptance of an honorarium by persons required to file a Financial Disclosure Statement. The term "honorarium" is defined in R.C. 102.01(H) which provides:

(H) "Honorarium" means 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.* "Honorarium" does not include ceremonial gifts or awards that have insignificant monetary value; unsolicited gifts of nominal value or trivial items of informational value; or earned income from any person, other than a legislative agent, for personal services that are customarily provided in connection with the practice of a bona fide business, if that business initially began before the public official or employee conducting that business was elected or appointed to his office or position of employment. (emphasis added)

#### Consideration of the Issues

The definition of "honorarium" includes any payment made in consideration for "any speech given" and "attendance at any...meeting." The question that arises is whether this definition is inclusive of *any* speech given by a member of the General Assembly and attendance at *any* meeting by a member of the General Assembly. For example, does R.C. 102.01(H) encompass a member's attendance at a deposition or the giving of a closing argument where the member is counsel for a client or does it encompass a member's attendance at a board meeting where the member is a member of the board?

A strict construction of the definition would appear to prohibit a member from receiving compensation for the above examples. However, to construe R.C. 102.01(H) so narrowly would essentially prohibit a member of the General Assembly from engaging in all outside employment or associations where the member was required to speak or attend meetings. The above examples all have a common thread, the speaking or attendance is merely *incidental to* the member's employment or association; the speech or attendance is not the primary purpose. Under these circumstances, the member's work encompasses much more than just speaking and attendance; these two aspects are only a small portion of the work performed by the member, they are merely incidental to the member's overall duties and responsibilities.

Therefore, this Committee feels the better construction of R.C. 102.01(H) is to limit its application to not include those situations where the member is involved in a regular *bona fide* employment situation or association and the speech or attendance is an incidental requirement of the position.

However, the member must be mindful that simply because the member is involved in a *bona fide* employment situation or association, that does not necessarily remove the activity from the prohibition of R.C. 102.03(H). With respect to speaking, there is a difference between "speaking" as an incidental part of your employment and giving a "speech." For example, a member of the General Assembly would be prohibited from receiving a fee for presenting speeches at continuing educational seminars, even if the member did so as a part of his or her regular business since this is not an *incidental* part of the member's employment.<sup>1</sup> In this situation, the giving of speeches is the primary purpose of the employment and not merely incidental to the employment and would therefore be prohibited.

With respect to attendance at a meeting, the member would be prohibited from receiving a fee for attendance unless there was a requirement that the member appear at the meeting as part of the member's *bona fide* employment or association. For example, a member would be prohibited from receiving compensation for simply attending a membership meeting of an organization. However, where the member is a member of the Board and is required to attend Board meetings as a part of his or her duties, the member would not be prohibited from receiving a fee for this attendance since it is incidental to the member's position as Board member.

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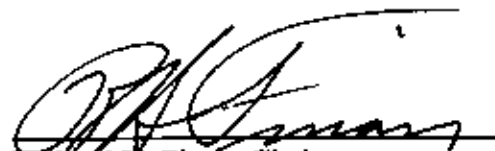
<sup>1</sup> R.C. 102.01(H) does provide an exception to this prohibition under limited circumstances. It states an honorarium does not include earned income "for personal services that are customarily provided in connection with the practice of a bona fide business, if that business initially began before the public official or employee conducting that business was elected or appointed to his office or position of employment."

Therefore, where the giving of a speech or the attendance at a meeting is incidental to the employment or association that the member is involved in, the member is not prohibited from receiving compensation. Notwithstanding the above holding, the Committee would again remind the members, that they are generally prohibited from soliciting or accepting an honorarium, and the above exception shall be narrowly drawn.

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 law or rules.

Conclusion

Accordingly, the Committee finds, and the members and employees of the General Assembly are so advised that (1) A member is not prohibited, pursuant to R.C. 102.03(H), from receiving compensation for speaking or attending a meeting where the speech or attendance is incidental to the member's *bona fide* employment or association.



Richard H. Finan, Chairman  
Joint Legislative Ethics Committee