

ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 2005-EC-013 Issued September 16, 2005

The Arkansas Ethics Commission has received a written advisory opinion request from Dr. Sandra Snow, an employee of the Arkansas Department of Health and Human Services ("ADHHS"). The question asked is whether or not it would be permissible for her to participate in a "Public Health Advisory Board Meeting" and accept remuneration from a sponsoring drug company. Dr. Snow further states that she would not be attending as a "government official" and would take leave to attend on her own time.

As stated in the invitation enclosed with the opinion request, the objective of the advisory meeting is "to convene a group of experts to gain their input and insight regarding (1) the use of combination vaccines, (2) improving vaccine coverage rates and (3) establishing vaccine preference for the good of public health." According to the opinion request, the Center for Disease Control, not the ADHHS Division of Health, negotiates contracts for vaccines to be used in Arkansas.

A review of the statutes under the Ethics Commission's jurisdiction reflects that there is no statute which expressly addresses the propriety of a state employee receiving a consulting fee for participation in an advisory board meeting. Ark. Code Ann. § 21-8-801(a)(1) does, however, prohibit a public servant from receiving a gift or compensation from a third party "for the performance of the duties and responsibilities of his or her office or position." An employee of the Arkansas Department of Health and Human Services is a "public servant" as defined in Ark. Code Ann. § 21-8-402(18), which includes all public employees.

When a public servant receives compensation from an entity other than the governmental body which he or she serves, the question is whether or not the compensation is for the performance of a duty or responsibility of the public servant's office or position. In this case, Dr. Snow would receive a consulting fee from the sponsoring drug company for participation in the advisory board meeting. According to Dr. Snow, such participation is not a duty or responsibility of her position as a medical director in the Arkansas Department of Health and Human Services.

Another statute, Ark. Code Ann. § 21-8-304(a), contains a general prohibition against a public official or state employee using or attempting to use his or her official position to secure special privileges or exemption for himself or herself or his or her spouse, child, parent, or other person standing in the first degree of relationship, or for those with whom he or she has a substantial financial relationship that is not available to others except as may be otherwise provided by law. The term “special privileges or exemption” is defined in § 400(p) of the Commission’s Rules on Conflicts to mean: a particular benefit or advantage unfairly extended to a person beyond the common advantages of others or the unjustified release of a person from a duty or obligation required of others.

Whether or not it would violate Ark. Code Ann § 21-8-304(a) for a state employee to receive a consulting fee for participation in an advisory board meeting depends upon the facts of the particular situation. Factors to be considered include, but are not limited to: whether the invitation was solicited by the employee; whether the sponsoring entity has a business relationship with the governmental body served by the employee; and if so, whether the employee has any influence in the decision making process with respect to that relationship. Such factors do not appear to be present in the instant situation. In the event an employee is in a position to influence the business relationship between the governmental body and the sponsoring entity, the Commission’s answer would differ.

Subsection (b) of Ark. Code Ann. § 21-8-304 provides that no public official or state employee shall accept employment or engage in any public or professional activity while serving as a public official which he or she might reasonably expect would require or induce him or her to disclose any information acquired by him or her by reason of his or her official position which is declared by law or regulation to be confidential. Additionally, Ark. Code Ann. § 21-8-304(c) prohibits a state employee from disclosing such information gained by reason of his or her position and further prohibits use of such information for his or her personal gain or benefit.

Based on the facts presented and the applicable law, it is the Commission’s opinion that the referenced statutes do not prohibit Dr. Snow from receiving compensation for participation in the advisory board meeting or other similar opportunities. This opinion, however, is subject to ADHHS employment policies. Moreover, any state employee involved in such a situation should be mindful of the provisions set forth above and use extreme caution in deciding whether or not to assume a compensated advisory role.

This advisory opinion is issued by the Commission pursuant to Ark. Code Ann. § 7-6-217(g)(2) .

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By:


Rita S. Looney, Chief Counsel