



STATE OF CONNECTICUT

OFFICE OF STATE ETHICS

Advisory Opinion No. 2013-4

December 19, 2013

Question Presented: **The petitioner asks whether the University of Saint Joseph (“USJ”) may provide Senator Beth Bye, co-chair of the Higher Education & Employment Advancement Committee, a travel allowance in order for her to give a keynote address—in her personal (not official) capacity—at a conference that USJ is co-sponsoring in Muscat, Oman.**

Brief Answer: **We conclude that USJ may provide Senator Bye with a travel allowance in order to cover necessary expenses only.**

At its November 2013 regular meeting, the Citizen’s Ethics Advisory Board granted the petition for an advisory opinion submitted by Pamela Trotman Reid, Ph.D., President of the University of Saint Joseph. The Board now issues this advisory opinion, which interprets the Code of Ethics for Public Officials (Ethics Code),¹ is binding on the Board concerning the person who requested it and who acted in good-faith reliance thereon, and is based on the facts provided by the petitioner.

Facts

The petitioner has provided the following pertinent facts:

[T]he University of Saint Joseph [“USJ”] has invited Sen. Beth Bye [co-chair of the General Assembly’s Higher Education & Employment Advancement Committee] to

¹Chapter 10, part I, of the General Statutes.

deliver a keynote address at a conference that we are co-sponsoring with our partner university, Sultan Qaboos University, in Muscat, Oman. Beth Bye is known for her involvement and expertise in early childhood education and was formerly the director of USJ's School for Young Children. We . . . wish to reimburse her for her airfare, lodging, and expenses incurred as a result of her participation. I want to underscore that her participation is based on her research, experience, and work in the early childhood area.

In the letter from USJ to Senator Bye inviting her to speak at the conference, it states: "You will be provided a travel allowance of up to \$4,500 to cover your travel expenses related to this trip. Please submit your receipts, and [USJ] will reimburse you."

Analysis

General Statutes § 1-84 (k) prohibits a "public official,"² like Senator Bye, from "accept[ing] a fee or honorarium for an article, appearance or speech, or for participation at an event, in the public official's . . . official capacity . . ." By regulation, an activity is deemed to be in one's "official capacity"—and, hence, a fee or honorarium is prohibited from being accepted—if the individual's "official position or authority was a significant factor in the decision to extend the invitation."³ But if "the individual was selected because of his or her knowledge and expertise, not his or her state position," then he or she "would not be barred, under Subsection (k) of Section 1-84, from accepting a fee or honorarium . . ."⁴

Here, USJ selected Senator Bye to speak at its conference, not by virtue of her legislative position or authority, but rather (in the petitioner's words) by virtue of her "research, experience, and work in the early childhood area." Bolstering that statement is the biographical sketch on Senator Bye's legislative website, which notes that the Senator

received her BA and MA in child development from the University of New Hampshire . . . has been a program

²The term "public official" includes, among others, "any member or member-elect of the General Assembly . . ." General Statutes § 1-79 (k).

³Regs., Conn. State Agencies § 1-81-22 (b).

⁴Regs., Conn. State Agencies § 1-81-22 (a).

director at Capitol Region Education Council, The University of Saint Joseph and Trinity College . . . and has had a role in the development of four model preschool programs in the Hartford region over the past 10 years serving a combined 750 children.⁵

In light of Senator Bye's academic and professional credentials, which underlie USJ's decision to select her as a keynote speaker at its conference, she is not barred by § 1-84 (k) from accepting a fee or honorarium in this case.

We must still address, though, whether she is barred from accepting a fee or honorarium by General Statutes § 1-84 (b). Described as "the broadest of the . . . conflict of interest sections,"⁶ § 1-84 (b) forbids a public official from, among other things, "accept[ing] other employment which will . . . impair his independence of judgment as to his official duties" As noted by the former State Ethics Commission ("former Commission"), § 1-84 (b) "has been consistently applied . . . to prohibit full-time Executive Branch officials and employees from accepting outside employment . . . which directly involves individuals or entities subject to the official's or employee's state authority."⁷

Such a "rigorous standard," however, has never been applied "to Connecticut's part-time legislators," most of whom "must, of economic necessity, pursue outside employment while in state service."⁸ In fact, legislators' outside employment has been restricted under § 1-84 (b) "[o]nly in instances of the most specific and direct conflict"⁹ One such instance involves committee chairpersons, who, given their "enormous power," have been "prohibited . . . from accepting employment in an industry or engaging in an activity over which their committee has jurisdiction."¹⁰

Senator Bye is a co-chair of the Higher Education & Employment

⁵<http://www.senatedems.ct.gov/Bye.php>.

⁶Advisory Opinion No. 90-6, Connecticut Law Journal, Vol. 51, No. 35, p. 5D (February 27, 1990).

⁷Id.

⁸(Internal quotation marks omitted.) Citizen's Ethics Advisory Board, Declaratory Ruling 2011-A, p. 4 (February 24, 2011).

⁹Advisory Opinion No. 90-6, Connecticut Law Journal, Vol. 51, No. 35, supra, p. 5D.

¹⁰Advisory Opinion No. 92-4, Connecticut Law Journal, Vol. 53, No. 38, p. 8C (March 17, 1992).

Advancement Committee. According to its website, the Committee has jurisdiction over all matters relating to “public and independent institutions of higher education, private occupational schools, [and] post-secondary education”¹¹ Higher or post-secondary education, then, is an “industry” over which the Committee has jurisdiction and in which, therefore, Senator Bye is prohibited by § 1-84 (b) from accepting employment. Because USJ (an “independent institution[] of higher education”¹²) is a participant in that industry, Senator Bye may not accept employment with it.

The question now is this: If Senator Bye accepts a fee or honorarium from USJ, has she accepted prohibited “employment” under § 1-84 (b)? The regulations define “employment” as “any work or endeavor . . . undertaken in order to obtain financial gain”¹³ Excluded is “any endeavor undertaken only as a hobby or solely for charitable, educational, or public service purposes, *when no compensation or other financial gain for the individual . . . is involved.*”¹⁴ That definition, we believe, is broad enough to encompass a fee or honorarium, both of which imply some sort of compensation. Indeed, an “honorarium,” said the former Commission, “denotes a *compensatory* payment”¹⁵; and a “fee” is defined as “*compensation* for a particular act or service”¹⁶

We find support for our belief in Advisory Opinion No. 90-28—“Receipt of Fees and Honorariums by University Faculty”—in which the former Commission stated as follows:

[W]hen a professor or researcher, in the performance of his or her state duties, possesses official authority to affect the interests of a certain business or industry, *he or she may not accept a fee or honorarium* from . . . that business or industry. (For example, a researcher studying the effects of sugar consumption on health should not accept an honorarium from or be a consultant for the sugar industry.) *To do so would result in violation of . . . §*

¹¹<http://www.cga.ct.gov/HED/>.

¹²*Id.*

¹³Regs., Conn. State Agencies § 1-81-14.

¹⁴(Emphasis added.) *Id.*

¹⁵(Emphasis added.) Advisory Opinion No. 81-3, Connecticut Law Journal, Vol. 42, No. 39, p. 11 (March 24, 1981) (“[a]n ‘honorarium’ is a voluntary reward for that for which no remuneration could be collected by law”).

¹⁶Black’s Law Dictionary (6th Ed. 1990).

*1-84 (b) . . . which prohibits the acceptance of outside employment which will impair independence of judgment as to one's state duties.*¹⁷

Implicit in that language is the former Commission's opinion—with which we agree—that to accept a fee or honorarium is to accept “employment,” for purposes of § 1-84 (b).

We must determine, therefore, whether Senator Bye's travel allowance is a fee or honorarium, for if so, its acceptance would constitute prohibited “employment” under § 1-84 (b). That brings us to Advisory Opinion No. 89-4, which addressed whether a legislator has received a fee or honorarium “[i]f the [conference] organizer provides the speaker with his or her transportation costs, food, and lodging”¹⁸ The answer was this: If the legislator receives nothing more than payment of necessary or subsistence expenses (e.g., standard travel and lodging), then he or she has not received a fee or honorarium; however, “[a]ny remuneration over and above these necessary expenses is considered to be a . . . fee or honorarium.”¹⁹ Such remuneration would include “unnecessarily lavish, travel, meals, or accommodation; entertainment; expenses of a spouse, child, or other guests of the official; a cash payment; or any other item or service of material value.”²⁰

And so, Senator Bye may use the \$4500 travel allowance for necessary or subsistence expenses only, namely: standard transportation (i.e., coach class) to and from the event; standard lodging (i.e., a standard room, not a suite) for the nights before, of, and after her speech; standard meals associated with the conference; and any related conference registration fee. Any other remuneration would be deemed a fee or honorarium and, thus, prohibited “employment” under § 1-84 (b)—unless, that is, the value of such remuneration fits within any of the Ethics Code's gift exceptions.

By order of the Board,

Dated 12/19/13_____

_____/s/s Charles F. Chiusano_____
Chairperson

¹⁷(Emphasis added.) Connecticut Law Journal, Vol. 52, No. 14, pp. 2D-3D (October 2, 1990).

¹⁸Connecticut Law Journal, Vol. 50, No. 31, p. 4C (January 31, 1989).

¹⁹Id.

²⁰Id., 6C.