

CAUTION: The following advice may be based on a rule that has been revised since the opinion was first issued. Consequently, the analysis reflected in the opinion may be outdated.

40 IAC 2-1-6

40 IAC 2-1-9

SEC found it was inappropriate for employees of the State Fire Marshal's Office to receive pay or travel expenses for serving as instructors for a private not-for-profit organization on state time.

89-I-23 State Time, Honoraria

FACT SITUATION

The Indiana Fire Instructors Association, Inc., a private not-for-profit organization, sponsors private "State Fire Schools" and charges a \$35 registration fee. The practice has been that the Indiana State Fire Marshal's Office furnishes instructors to the association to be facilitators at their privately sponsored schools. The State of Indiana paid the cost of hotel accommodations, per diem, allowed the use of state vehicles, and the state employees received a \$25 honorarium from the private association, the Indiana Fire Instructor Association, Inc. The same school is put on around the state by the State Fire Marshal's instructors for a registration fee of \$10.

QUESTION

The newly appointed State Fire Marshal informed the Indiana Fire Instructors Association that the practice of providing instructors to the school to teach on state time and paying the expenses of the state employees to do this, as well as allowing the instructors to be paid an honorarium, will no longer be permitted. The Ethics Commission was asked for a formal opinion to the following questions:

1) Is this outside activity permitted, and 2) is it permissible for the instructors to receive an honorarium.

OPINION

The State Ethics Commission stated that state employees are not permitted to receive pay for outside activities on state time. In addition, the state agency cannot pay the employee for outside activity on state time or pay expenses including hotel, per diem and use of the state car.

The relevant rule, 40 IAC 2-1-9(G), provides, "No state officer or employee shall engage in work other than the performance of official duties during working hours, except as permitted by agency, departmental, or institutional policy or regulation."

The rule on honoraria, 40 IAC 2-1-6(C) provides, "If an honorarium is offered to an employee as payment for a speech or article whose content is derived from that employees state job, the honorarium is considered as payment for the performance of state duties and is not to be accepted. If an honorarium is offered to the state employee as payment for a speech or article whose content is based solely upon the employee's personal knowledge or expertise, the employee may accept it."

In the definition section of the rule, 40 IAC 2-1-4(I), honorarium is defined to mean a fee received for similar activities. Therefore, an employee cannot receive an honorarium for an activity where the content is derived from his state job, in this case teaching the same kind of fire schools.

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