

OHIO ETHICS COMMISSION

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David E. Freel, *Executive Director*

October 31, 2007 Informal Opinion 2007-INF-1031-3

James R. Rough, Executive Director
Counselor, Social Worker & Marriage and Family Therapist Board

Dear Mr. Rough:

On June 28, 2007, the Ohio Ethics Commission received your letter requesting an advisory opinion. You explained that you are the Executive Director for the Counselor, Social Worker & Marriage and Family Therapist Board (Board). You have asked whether the Ethics Law and related statutes prohibit the Association of Social Work Boards (ASWB) or the National Board for Certified Counselors (NBCC) from paying your travel expenses to attend their conventions. ASWB and NBCC provide examination services for the Board's licensees and license applicants pay examination fees directly to ASWB and NBCC.

The Board has different relationships with ASWB and NBCC. Because of these different relationships, this opinion is limited to addressing whether the Ethics Law and related statutes prohibit ASWB from paying your travel expenses to attend its conventions. A separate advisory opinion will address this issue as it pertains to NBCC.

Brief Answer

As explained below, because you can meet the exception in R.C. 102.03(H)(1), you are not prohibited from receiving travel expenses from ASWB to attend its meetings or conventions.

Facts

The Board is a dues-paying member of ASWB. In common with all 50 states and most of the Canadian Provinces, the Board is a member of ASWB and uses ASWB's licensure examination to qualify applicants for licensure. Each applicant for licensure pays ASWB directly for the examination.

The ASWB bylaws provide for payment by ASWB for travel, meal, and lodging expenses for ASWB board members and committee chairs to attend the fall and spring business meetings and other meeting as required. The ASWB bylaws also provide for payment by ASWB for the travel, meal, and lodging expenses for one delegate from each jurisdiction's regulatory board to attend its annual fall business meeting. Part or all of these expenses come from membership dues.

In November 2006, you were elected to serve as the Administration Forum Chair (Chair), responsible for organizing the meetings at each convention. You have been asked to run for the position of ASWB Treasurer at the fall meeting. The Board approved your ability to run for the Treasurer's position. If you were to serve as Chair and Treasurer, the ASWB would pay for your travel, meal, and lodging expenses to both conventions and two other meetings annually.

The Board does not regulate ASWB. The Board contracts with ASWB to use its examination. You explained that the relationship the Board has with ASWB is the most cost effective way of providing an examination that meets national examination standards.

Travel Expense Payments Permissible—R.C. 102.03(H)(1)

R.C. 102.03(H)(1) provides that, for public officials and employees who file financial disclosure statements, some travel expense payments are permissible. R.C. 102.03(H)(1) provides that a public official or employee is required to file a financial disclosure statement under R.C. 102.02 is not prohibited from accepting:

[T]he payment of actual travel expenses, including any expenses incurred in connection with the travel for lodging, and meals, food, and beverages provided to the public official or employee at a meeting at which the public official or employee participates in a panel, seminar, or speaking engagement or provided to the public official or employee at a meeting or convention of a national organization to which either house of the general assembly, any legislative agency, or any other state agency pays membership dues.

(Emphasis added.) R.C. 102.03(H)(1) is an exception to R.C. 102.03(E) and the General Assembly also specifically recognized the application of this exception to the prohibition in R.C. 2921.43(A)(1). (Discussed below.)

As Executive Director of the Board, you are required to file a financial disclosure statement. AWSB is a national organization to which the Board pays membership dues. Therefore, the exception applies to you in this situation and you are not prohibited from receiving travel expenses from ASWB to attend its meetings or conventions.

Please note that the payment or reimbursement of travel and lodging expenses, however, must be related to your attendance at ASWB conventions or meetings and also limited to the amount that is essential for your travel. See also R.C. 102.03(D) and Ohio Ethics Commission Advisory Opinion No. 87-007 (R.C. 102.03(D) prohibits a public official from using his or her position to secure travel expenses that are beyond the scope of any applicable exception). R.C. 102.03(E) would also prohibit you from soliciting or accepting any payments or reimbursements for items that benefit you personally and are not related to your official travel. R.C. 2921.43(A)(2) would prohibit you from soliciting or accepting payment or reimbursements for expenses that are excessive or beyond the norm.¹

Travel Expenses Prohibited (R.C. 102.03 (E) and 2921.43(A)(1))

Division (E) of R.C. 102.03 provides that no public official or employee shall:

[S]olicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

As an employee of a state regulatory board, you are subject to R.C. 102.03(E). Adv. Op. No. 90-012.

“Anything of value” includes the payment or reimbursement of travel, meal, and lodging expenses. Id. The travel, meals, and lodging expenses, or reimbursements, you would receive from ASWB are substantial things of value for purposes of RC. 102.03(E). R.C. 102.01(G); 1.03. R.C. 102.03(E) prohibits a public official or employee from soliciting or accepting anything of substantial value from a party that is regulated by, interested in matters before, or doing or seeking to do business with his public agency, or where the receipt of such a thing of value could otherwise impair his objectivity and independence of judgment with regard to his official decisions and responsibilities. Adv. Op. No. 95-005.

The Commission has concluded that R.C. 102.03(E) prohibits a public official or employee from soliciting or accepting payment for expenses incurred in connection with official travel from any of the parties listed above because those parties have a direct nexus to the official or the public agency the official serves. Adv. Op. No. 2001-04. Because ASWB receives a benefit, in the form of examination fees, as a result of the Board's decision to utilize the testing services ASWB provides, the organization is interested in matters before the Board. Absent the exception in R.C. 102.03(H)(1), discussed above, R.C. 102.03(E) would prohibit you from accepting anything of substantial value, including the payment of travel expenses, from ASWB.

¹ The Office of Budget and Management (OBM) has issued guidelines for the payment of travel expenses incurred in connection with state travel. While these guidelines are not conclusive when determining whether particular expenses are excessive or beyond the norm, they are instructive and you may want to use the guidelines if in doubt about the reasonableness of any reimbursement or payment.

You should also note R.C. 2921.43(A), which provides that no public servant shall knowingly solicit or accept compensation, other than as allowed by law, "to perform his official duties, to perform any other act or service in the public servant's public capacity, for the general performance of the duties of the public servant's public office or public employment, or as a supplement to the public servant's public compensation."

As a state employee, you are a "public servant" subject to R.C. 2921.43(A)(1). R.C. 2921.01(B). The Commission has concluded that travel expenses provided to a public official for travel incurred in connection with his public duties would constitute additional compensation for the performance of his official duties. Adv. Op. No. 95-005. Once again, absent the exception in R.C. 102.03(H)(1), this provision would prohibit you from accepting supplemental compensation, in the form of travel expenses payments or reimbursements, for travel in connection with your public duties.

Conclusion

As explained below, because you can meet the exception in R.C. 102.03(H)(1), you are not prohibited from receiving travel expenses from ASWB to attend its meetings or conventions.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on October 31, 2007. The 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. If you have any questions or desire additional information, please feel free to contact this Office again.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer A. Hardin". The signature is fluid and cursive, with a large initial "J" and "H".

Jennifer A. Hardin
Chief Advisory Attorney