

ED GAINNEY
MAYOR



LEANNE DAVIS
EXECUTIVE DIRECTOR

CITY OF PITTSBURGH
ETHICS HEARING BOARD
CITY-COUNTY BUILDING

OPINION OF THE BOARD

July 12, 2024

To the Requester:

Confidential

Via electronic mail

RE: 24-A-011 [REDACTED] Honorarium

Dear Requester:

Issues: You ask how you should respond to the offer of compensation for advising and presenting on topics related to your field in a closed workshop. You also note the program organizer as a general practice identifies participants by title in the event agenda and participant correspondence.

Short Answers:

- (1) Compensation is permitted for consulting work so long as there is no use of your position or other City resources.
- (2) While use of title is generally prohibited, based on the specific facts at hand, you are permitted to use your title as “mere backdrop” biographical information.

Statement of Facts: Advice is issued based on the facts submitted, with no independent investigation. [City of Pittsburgh Code of Ordinances \(“Code”\) § 197.13](#). It is the burden of each requesting party to truthfully disclose all material facts relevant to the inquiry. The facts as given are:

- You are employed by the City of Pittsburgh [REDACTED].
- Through this role, you work in the occupational field relating, among other aspects, to [topic] [REDACTED]. Job Description, [REDACTED]
- You received an invitation to participate in [event by sponsoring organization] [REDACTED] as “a [participant] [REDACTED].”

- Each [participant] [REDACTED] gives a very brief, 15-minute presentation to the gathered group. [REDACTED] [Participants] may work closely with the event organizers to craft this presentation in order to maximize the benefit to [event attendees] [REDACTED].
- You note a purpose of these presentations is to provide each subject matter expert an uninterrupted opportunity to have their guidance heard, and to provide examples of other projects which may be of interest but without immediate application to the participants.
- [REDACTED] [Event attendees] will be in attendance with specific [REDACTED] [topic] projects for which they wish to receive advice.
- The event is invite-only, is not advertised, nor open to the public.
- [REDACTED] The purpose of the event is to workshop is to bring together experts in the [REDACTED] fields — [REDACTED] and more — to help [event attendees with topic] [REDACTED].
- You have a relationship with a member of the sponsoring organization. This relationship predates your service to the City of Pittsburgh.
- You provided correspondence relating to the event which details biographical summaries of the participating individuals, including job titles.

Relevant Law: At issue are conflict of interest and honoraria rules.65 [Pa.C.S. §§ 1103\(a\),\(d\), and 1102](#); [Code § 197.03\(a\)](#), [Code § 197.04](#); and [Home Rule Charter § 706](#). Several terms within these laws have statutory definitions. Relevant laws and definitions are listed at the end of this letter.

Legal Analysis

Honoraria: As your inquiry addresses the specific conduct of “presentations,” we will first examine the specifics of honoraria rules before reviewing general rules on conflict of interests and use of title.

Honoraria restrictions prohibit payments for specific conduct of speeches, published works, appearances, and presentations that relate to one’s public field or occupation; the restrictions also apply to excessive payments. [Fiorello, Order 05-1363](#) at page 90. State Ethics Commission precedent has found that compensation for consulting is not prohibited, even when it is directly related to one’s public profession. [Urbanic, Opinion 22-004](#).

Applying the above factors and precedent, it is our opinion that the described conduct is not prohibited honoraria, and the \$500 payment is permitted. We reach this conclusion by noting the conduct at issue is an invite-only, closed-door consultation or workshop, and the fifteen-minute “presentation” to the approximately a dozen workshop attendees is not inconsistent with the work of consultation. Furthermore, the fact that the sponsoring organization considers their payment to you as “honoraria” does not supersede ethics laws, nor our analysis of the same. “[H]onorarium is determined as a matter of law by application of the

statutory definition set forth in the Ethics Act, not by mere label. ... [the payor's description] is relevant but not controlling as to the nature of the payments. To hold otherwise would elevate the label of payment over its substance. This is not the law in Pennsylvania." [Fiorello, Order 05-1363 at page 88 with continuation at page 90](#). [Baehr Bros. v. Commonwealth, 487 Pa. 233, 239, 409 A.2d 326, 329 \(1979\)](#) (*finding* "Form over substance is not the law of this Commonwealth, and, quite to the contrary, tax cases must be decided on realities.").

Next, as to conflicts, you are advised that you cannot use the authority of your position or City resources to gain, perform, or retain outside, secondary employment or income.

Use of Position, Title: Our Code provides that it is generally a violation to use any public good for personal use or private business. [65 Pa.C.S. §§ 1103\(a\),\(d\), and 1102; Code § 197.03\(a\), Home Rule Charter § 706; and Code § 197.04](#). Your position, its title, City confidential information, and other items related to your service are public property. *Id.* You cannot use or allow to be used City facilities, property, staff or information obtained in the course of your employment for personal use beyond that available to the public at large. *Id.* Notably, you generally cannot use your title in connection with any private business. [Code § 197.04](#).

Generally, these restrictions mean that, as it relates to the acquisition, retention, or performance of your outside income, you cannot use City position: City time, City insignia or uniform, City letterhead, your City title, confidential or proprietary City information, City staff, the City mailroom or print shop, City phones and other equipment, your City office, or City conference rooms; you may not solicit business on City time nor solicit connections you make through your position. [Porterfield, 24-A-008](#). Specifically, we have advised that you may not list your City position on any website or marketing materials for outside income. [Confidential Opinion, 19-A-001](#).

Here, we distinguish the facts and circumstances at issue with our prior precedent. In the present case, the described workshop does not involve a website, marketing materials, nor any advertisement of your title. Your City title is not being used to create financial gains; it is provided as mere biographical information, for identification purposes and to elicit your area of expertise. The use of biographical information is a common practice and, so long as it is not being used for the purpose of gaining unlawful private pecuniary gain, then we find it does not offend the public interest. The State Ethics Commission has found on multiple occasions that references to one's public position as "mere backdrop" or biographical information to be permissible. [Sims, Order 1769](#). Furthermore, the nexus between your City position and the private business is tenuous. The opportunity here was extended based on the experience and networks you acquired that preceded your present City employment. In sum, it does not appear based on the stated facts that your title would be used "in connection with" private business, and is accordingly permitted.

To provide a complete response, we note that your question does not indicate your preference for this source of outside compensation, nor whether you prefer to attend in your

official capacity and eschew the offered \$500. Accordingly, we guide that if you wish to appear in your official capacity at this workshop, you can receive City-reimbursed travel expenses and attend on City time; if so, you cannot receive the \$500. Alternatively, if you attend in your capacity as a private citizen, you must not receive City-reimbursed travel expenses and must take some form of leave time to mark this absence if the workshop occurs on a work day.

Reliance: This advice is based on the facts summarized in this opinion letter. [Code §§ 197.13 and 197.16\(a\)](#). Please contact our staff if these facts are inaccurate or incomplete – or if the facts change in the future. Advice can be appealed or amended. [Code § 197.13](#).

Formal advice is issued by the full Ethics Hearing Board in public meeting and is binding on the Board in a subsequent proceeding concerning the person or entity that requested this advice, or to which this advice referred. [Code §§ 197.13, 197.16, and Board Regulation 3.1](#). The date of this advisory aligns with the date of our executive session meeting and revisions; deliberations are properly held in closed session under the law. We are issuing this to you immediately in consideration of travel arrangements. It will be formally adopted at our next public meeting that we achieve quorum.

The Ethics Hearing Board works from the City’s Code of Conduct, which adopts the entirety of the State Ethics Act, along with portions of the City Code and Home Rule Charter. [Code § 197.01](#). The State Ethics Commission is the authority on the Act. If the State Ethics Commission provides a more restrictive view than this writing, the State’s position will govern. [65 Pa.C.S. §§ 1107, and 1109](#). In contrast, the Board and its staff are legally bound to adopt or exceed State Ethics Commission interpretations of the Act. [65 Pa.C.S. § 1111](#).

Conclusion: We find the payor’s description of the compensation to be neither binding nor instructive in the application of honorarium rules. This Board is vested with the authority to interpret governmental ethics laws, and we find the \$500 offered payment may be properly considered outside income so long as there is no use of City resources as detailed above. We further find that biographical use of your City title is permissible in this instance because it is not being used in advertising, marketing, or other unlawful private pecuniary gain.

Thank you for contacting this office regarding this inquiry. Please contact our staff with any additional questions.

Sincerely,



Maryann Herman, Chair

Relevant Governmental Ethics Provisions:

§ 1103 (d) Honorarium. No public official or public employee shall accept an honorarium.

§ 1102 (a) "Honorarium." Payment made in recognition of published works, appearances, speeches and presentations and which is not intended as consideration for the value of such services which are nonpublic occupational or professional in nature. The term does not include tokens presented or provided which are of de minimis economic impact.

65 Pa.C.S. § 1103 (a) Conflict of interest.—No public official or public employee shall engage in conduct that constitutes a conflict of interest.

65 Pa.C.S. § 1102 (a) "Conflict" or "conflict of interest." Use by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employment for the private pecuniary benefit of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated. The term does not include an action having a de minimis economic impact or which affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the public official or public employee, a member of his immediate family or a business with which he or a member of his immediate family is associated.

Code § 197.03 (a) - CONFLICT OF INTEREST. No public official or public employee shall exert influence with respect to property or a business with which he or a member of his or her direct family is associated.

Code § 197.04 USE OF AUTHORITY AND PUBLIC PROPERTY.

(c) No public official or City employee shall use or permit the use of his or her official title, insignia or position in connection with any private business from which the public official or City employee receives compensation.

(d) No public official or City employee shall use or allow to be used any City facilities, property, staff or information obtained in the course of his or her employment for personal use other than would be generally available to the public at large.

Home Rule Charter § 706: No elected official, officer or employee shall in any manner receive benefit from the profits or emoluments of any contract, job work or service for the City, or accept any service or thing of value directly or indirectly upon more favorable terms than those granted to the public generally, from any person, firm or corporation having dealings with the City. No elected official, officer, or employee shall solicit or receive any compensation, gratuity or other thing for any act done in the course of

public work. This section shall be broadly construed and strictly enforced. Any violation of this section shall cause the offending official, officer, or employee to forfeit office or employment.