

ADVISORY OPINION 08-06

Interpretation of T.C.A. § 3-6-301(11) with respect to whether an official in the executive branch whose registration fee for a conference or educational seminar is waived by an employer of a lobbyist may receive refreshments incidental to the conference or educational seminar if these refreshments are included in the registration fee.

INTRODUCTION

Tina G. Miller, General Counsel, of the Tennessee Department of Financial Institutions (“Department”), has requested the following Advisory Opinion.

QUESTION

Does the Ethics Reform Act of 2006 (“Act”) prohibit Officials in the Executive Branch (“State Officials”) from accepting meals, refreshments, or snacks at a conference or seminar where these items are paid for by an employer of a lobbyist (“Employer”), and the Employer waives the conference registration fee?

ANSWER

No. The waiver of a registration fee by an Employer sponsoring a conference or educational seminar is not a gift.¹ If the fee includes the cost of meals, refreshments, or snacks provided to the registered attendee in connection with a bona fide conference or educational seminar, then such meals, refreshments, or snacks are also not gifts.

To the extent that the registration fee does not include the cost of meals, refreshments, snacks, or other items within the statutory definition of “gift,” the Act prohibits the State Official from accepting such items, unless the State Official pays the fair market value for these items, or unless the gift falls within an exception to the gift ban.

FACTS

The Department regulates the Tennessee banking system.² In doing so, it examines the financial soundness of the Tennessee financial institutions it regulates, investigates consumer

¹ Tenn. Code Ann. § 3-6-301(11). Ms. Miller’s question inquires only with regard to receptions, continental breakfasts, snacks, and meals “included within the price of the conference.” As she asked, “[p]lease confirm that an employee of the Department can accept refreshments at an out of state conference, seminar or convention when refreshments are included in the cost of the conference and an employer of a lobbyist waives the conference fee.” .

² <http://www.tennessee.gov/tdfi/index.html> (last visited September 4, 2008).

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complaints, and is “the administrations primary source for new bank-related legislation.”³ The Department is located within the Executive Branch.

From time to time various trade organizations, which are also Employers, invite Department employees to attend conferences, seminars, or conventions that the Employers are sponsoring. The Employer trade organizations will typically offer to waive the registration fee for the conference, seminar, or convention so that the Department employees may attend free of charge.⁴ Included within the price of the conference, seminar, or convention may be receptions, breakfasts, snacks and perhaps meals.

ANALYSIS

The Act provides, in part, “an official in the executive branch, or the immediate family of such a candidate or official, may not solicit or accept, directly or indirectly, a gift from an employer of a lobbyist or a lobbyist.”⁵ For the prohibition to apply, the recipient must be a State Official, the giver must be an Employer or lobbyist, and the thing given or received must fall within the definition of “gift.”

Tenn. Code Ann. § 3-6-301(20) defines “Official in the Executive Branch” as “the governor, any member of the governor's staff, any member or employee of a state regulatory commission, including, without limitation, directors of the Tennessee Regulatory Authority, or any member or employee of any executive department or agency or other state body in the executive branch.”

The Department is within the Executive Branch. Department employees are thus Executive Branch employees. As such, Department employees are State Officials and subject to the Act. Ms. Miller informs the Commission that many of the various trade organizations which sponsor the conferences and educational seminars in question are Employers. As Employers, the trade organizations are also be subject to the Act.

Tenn. Code Ann. § 3-6-301(11) defines “gift” as, in part, “any payment, honorarium, subscription, loan, advance, forbearance, rendering, or deposit of money or services, unless consideration of equal or greater value is received.” However, the statute specifically provides that “‘gift’ does not include the waiver of a registration fee for a conference or educational seminar.” As the definition of “gift” explicitly excludes an Employer’s waiver of a conference or educational seminar registration fee, a State Official may accept such a waiver.

The question then becomes whether the food and beverages included within a “registration fee” that is being waived for the conference or educational seminar. In other words,

³ <http://www.tennessee.gov/tdfi/index.html> (last visited September 4, 2008).

⁴ If the conference, seminar, or convention is out-of-state the Department, and not the Employer, pays all travel and lodging expenses for the Department employees.

⁵ Tenn. Code Ann. § 3-6-305(a).

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what did the Legislature intend for a State Official to receive in stating that the definition of “gift” does not include the waiver of a registration fee for a conference or educational seminar?

Statutory interpretation in Tennessee usually begins with an examination of “the natural and ordinary meaning of the statutory language.”⁶ The Commission thus turns to the “commonly accepted meaning” of the words “registration fee” to determine what is normally included in the waiver of such a fee.⁷ There is no dictionary definition of the term. We turn next to contemporary usage.⁸

Contemporary usage of these terms, in the context of conferences, does shed light on the commonly accepted meaning. The Tennessee Arts Commission (“TAC”), for example, recently held the “Talk to Me, Tennessee Conference: A Statewide Conversation about the Arts.”⁹ TAC’s recent conference had a registration fee of forty dollars (\$40.00) per day. According to the TAC website, payment of this conference “registration” allowed an individual to receive the following: a light breakfast, presentations, breaks, panel discussions, workshops, entertainment, and lunch, but not dinner.¹⁰

The Tennessee Department of Environment and Conservation’s recent two day Governor’s Conference on Biofuels had a conference “registration fee” of two hundred dollars (\$200.00). Payment of this registration fee allowed an individual to receive the following: receptions, breakfasts, seminars, presentations, lunches, panel discussions, breaks, and one (1) dinner.¹¹

Other surveyed conferences and educational seminars were similar in that payment of the registration fee allowed an individual to attend seminars, panel discussions, speakers, presentations, to participate in other educational activities, and to receive food and beverages, including breakfast, lunch, snacks, and beverages, and occasionally dinner and entertainment.

In common usage, payment of a conference “registration fee” often includes food and admission to events where food and beverages are served.¹²

⁶ *State v. Blackstock*, 19 S.W.3d 200, 210 (Tenn. 2000).

⁷ The words utilized in a statute must be given their ordinary, commonly accepted meanings. *Computer Shoppe, Inc. v. State*, 780 S.W.2d 729, 735 (Tenn.App.1989).

⁸ “Registration” is defined by the dictionary as the act of registering. “Register,” used as a verb, is defined as “to place or cause placement of one’s name in a register.” “Register” as a noun is defined as “a formal or official recording of items, names, or actions.”

⁹ http://www.arts.state.tn.us/ttmt_conference.htm (last visited May 19, 2008).

¹⁰ Dinner, unlike lunch, did not appear to be included in the conference fee, and it was unclear from the schedule whether the breaks included food. http://www.arts.state.tn.us/ttmt_conference.htm (last visited May 19, 2008).

¹¹ <http://www.tennessee.gov/environment/altfuels/conference/agenda.shtml> (last viewed May 19, 2008).

¹² If the meals, snacks, receptions and food were not included as a part of the registration fee, they would not fall under the exception.

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Thus, the Act does not prohibit State Officials, in attending a qualified conference or educational seminar pursuant to a waiver of a registration fee under Tenn. Code Ann. § 3-6-301(11), from accepting whatever food and beverages are offered or provided to all persons who have registered and paid to attend the conference. Since such food and beverages are provided as a consequence of the registration fee payment, the food is not a “gift.”

There is, therefore, no fifty-one dollar (\$51.00) per person limitation attached to any of the conference food or beverages.¹³ It is not necessary for the State Official or the Department to reimburse the conference sponsor¹⁴ if the value of a particular meal or reception exceeds fifty-one dollars (\$51.00) per person.

This exception only covers meals or other benefits that are included in the registration fee and thus offered or provided to all registered persons. If a State Official wishes to accept meals or other benefits that are not covered by the registration fee, such a benefit would fall within the Act’s definition of “gift.”¹⁵ As such, the benefit would also fall within the Act’s general gift ban.¹⁶ The State Official would have to pay for the value of the meal or other benefit, unless the meal or other benefit fell within an exception to the gift ban.

Donald Hall, Chairman
Dianne Ferrell Neal
R. Larry Brown
Thomas J. Garland
Linda Whitlow Knight, Esq.
Benjamin S. Purser, Jr.,
Commissioners

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¹³ Even if the conference food and beverages were considered a “gift,” the fifty-one dollar (\$51.00) limitation would not necessarily apply. The fifty-one dollar (\$51.00) meal limitation is not absolute. Only meals and events falling under the exceptions to the gift ban found in Tenn. Code Ann. § 3-6-205(b)(8) through (10) require the meal, entertainment, or other activity to fall within a fifty-one dollar (\$51.00) limit. Food provided as part of a conference sponsored by an established and recognized organization of elected or appointed state government officials, for example, is not subject to the fifty-one dollar (\$51.00) limit. Tenn. Code Ann. § 3-6-305(b)(7)(B).

¹⁴ Ms. Miller’s request notes that the Department has been reimbursing the trade organization sponsoring the conference, if any meal or reception exceeds fifty-one dollars (\$51.00).

¹⁵ Tenn. Code Ann. § 3-6-301(11).

¹⁶ Tenn. Code Ann. § 3-6-305(a).