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Opinion No. 08-11

Prohibited Activities of Legislator

QUESTIONS

1. A member of the General Assembly is employed by both for-profit and not-for-profit entities to perform program development functions for such entities. Is it a violation of Tenn. Code Ann. § 2-10-123(a) for that member to participate in writing a grant application for any such entity to apply for a state grant or contract if the member's activities are limited solely to research and writing the grant or contract proposal without participating in any contact with state entities to encourage award of such grant or contract application?

2. May that member of the General Assembly accept an honorarium for speaking to groups about topics of concern to the member's clients?

3. May a member of the General Assembly advocate, lobby or influence legislative or administrative action on behalf of the member's clients for grants, funding, contracts or favorable rulings from municipalities, counties, other states or the federal government?

OPINIONS

1. Tenn. Code Ann. § 2-10-123(a) would prohibit a member of the General Assembly from participating in the writing of a grant application for any for-profit or not-for-profit entity to apply for a state grant or contract.

2. To the extent that any speaking engagement is not undertaken in the member's capacity as a member of the General Assembly, but in that member's capacity as a private business person, professional, or tradesperson, then he or she is not prohibited from accepting an honorarium in connection with the engagement. A member of the General Assembly would be prohibited, however, from accepting travel expenses, meals and lodging associated with any appearance, speech or article from a lobbyist or the employer of a lobbyist unless such items fell within the exceptions contained in Tenn. Code Ann. § 3-6-305(b)(1) and (9).

3. A member of the General Assembly would not be prohibited from receiving a fee or other compensation from a person or entity other than the state, a county or municipality, for providing consulting services, as that term is defined in Tenn. Code Ann. § 2-10-122(1), in

connection with counties, municipalities, other states and the federal government.

ANALYSIS

1. A member of the General Assembly is employed by both for-profit and not-for-profit entities to perform program development functions, including researching and writing grant applications, for such entities. You ask whether Tenn. Code Ann. § 2-10-123(a) would prohibit such a member from participating in writing a grant application for a state grant or contract, if the member's participation was limited solely to research and writing and did not include any contact with state officials to encourage the award of a grant or contract.

Tenn. Code Ann. § 2-10-123(a) provides:

> It is an offense for any member of the general assembly, member-elect of the general assembly, governor, member of the governor's staff, secretary of state, treasurer, or comptroller of the treasury to knowingly receive a fee, commission or any other form of compensation for consulting services from any person or entity, other than compensation paid by the state, a county or municipality.

With respect to an official in the legislative branch, "consulting services" is defined as

> services to advise or assist a person or entity in influencing legislative or administrative action, as that term is defined in § 3-6-301, relative to Tennessee state government. "Consulting services" . . . also means services to advise or assist a person or entity in maintaining, applying for, soliciting or entering into a contract with the state of Tennessee. "Consulting services" does not mean the practice or business of law in connection with representation of clients by a licensed attorney in a contested case action, administrative proceeding or rule making procedure.

Tenn. Code Ann. § 2-10-122(1).

The statute does not define what constitutes "services to advise or assist a person or entity;" however, it is a basic rule of statutory construction that, when construing or interpreting statutes, courts must "ascertain and carry out the legislature's intent without unduly restricting or expanding a statute beyond its intended scope." *Lavin v. Jordan*, 16 S.W.3d 362, 365 (Tenn. 2000). In so doing, courts "examine the 'natural and ordinary meaning of the language used, without a forced or subtle construction that would limit or extend the meaning of the language.' Where the language of the statute is clear and unambiguous, . . . [courts] will give effect to the statute according to the plain meaning of its terms." *Id.* at 365 (citations omitted). The word "advise" is ordinarily defined as "to give advice to" or "to give information or notice to," while the word "assist" is ordinarily

defined as "to help" or "to give support or aid." Webster's New Collegiate Dictionary, 9th Ed., pp. 59, 109 (1988).

Under these definitions, a member of the General Assembly who researches and writes a grant application for a for-profit or not-for-profit entity is clearly advising or assisting that entity in "applying for, soliciting or entering into a contract with the state of Tennessee." Accordingly, we think a court would find that Tenn. Code Ann. § 2-10-123(a) prohibits a member of the General Assembly from receiving a fee, commission or any other form of compensation from any entity other than the State of Tennessee, or county or municipality thereof, for participating in writing a grant application for a state grant or contract, regardless of whether such member's participation is limited to research and writing of the application.

2. Your next question asks whether a member of the General Assembly may accept an honorarium for speaking to groups about topics of concern to the member's clients. There are several statutes that address these issues, and they must be read together. Tenn. Code Ann. § 2-10-116 provides as follows:

> (a) The acceptance of an honorarium by a public official in such person's capacity as a public official is prohibited. Honorarium means a payment of money or any thing of value for an appearance, speech or article, but does not include actual and necessary travel expenses, meals and lodging associated with such appearance, speech or article.
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> (b) Acceptance of an honorarium for an appearance, speech or article by a public official in such person's capacity as a private business person, professional or tradesperson is not prohibited.

The statute defines "public official" as including any "person holding any state public office filled by the voters," and thus a member of the General Assembly would be subject to this prohibition against the acceptance of honoraria. Tenn. Code Ann. § 2-10-116(c)(1). However, this statute only prohibits a member of the General Assembly from accepting honoraria in his or her capacity as a public official, *i.e.*, as a member of the General Assembly. Subsection (b) of the statute provides an exception to the prohibition by specifically allowing a public official to accept an honorarium in his or her capacity as a private business person, professional or tradesperson. Thus, to the extent that any speaking engagement is not undertaken in the member's capacity as a member of the General Assembly, but in that member's capacity as a private business person, professional or tradesperson, then he or she is not prohibited from accepting an honorarium in connection with the engagement.

While Tenn. Code Ann. § 2-10-116 prohibits a member of the General Assembly from accepting an honorarium in such person's capacity as a public official, it does not prohibit members

from accepting travel expenses, meals or lodging associated with any appearance, speech or article. However, Tenn. Code Ann. § 3-6-304(n) provides that "[n]o official in the legislative or executive branch shall accept travel expenses, meals or lodging paid pursuant to § 2-10-116(a), if payment of the travel expenses, meals or lodging violates any provision of this section or constitutes a prohibited gift under the provisions of § 3-6-305." Thus, a member of the General Assembly would be prohibited from accepting travel expenses, meals or lodging associated with any appearance, speech or article, if the acceptance of such items would violate any provision of section 3-6-304 or it would constitute a prohibited gift under section 3-6-305. The only provision of section 3-6-304 that addresses any of these items is subsection (h), which states that "[e]xcept to the extent permissible under § 3-6-305, no employer of a lobbyist, lobbyist or any person acting at the direction of an employer or lobbyist shall pay the lodging expenses of an official in the legislative branch or executive branch or immediate family of the official." Reading these two subsections together, a member of the General Assembly is prohibited from accepting lodging associated with any appearance, speech or article from an employer of a lobbyist, lobbyist or any person acting at the direction of an employer or lobbyist, except to the extent permitted by Tenn. Code Ann. § 3-6-305.

Tenn. Code Ann. § 3-6-305(a) prohibits the employer of lobbyist or a lobbyist from directly or indirectly providing a gift to, among others, an official in the legislative branch or the immediate family of such official. It further prohibits an official in the legislative branch and his or her immediate family from soliciting or accepting, directly or indirectly, a gift from an employer of a lobbyist or a lobbyist. Subsection (b), however, contains a number of exceptions to the general prohibition against gifts contained in subsection (a), including:

> (1) Benefits resulting from business, employment, or other outside activities of a candidate or official or the immediate family of a candidate or official, if such benefits are customarily provided to others in similar circumstances and are not enhanced due to the status of the candidate or official.
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> (9) Entertainment, food, refreshments, meals amenities, or beverages that are provided in connection with an in-state event at which a candidate for public office, an official in the legislative branch or an official in the executive branch, or an immediate family member of the candidate or official is a speaker or part of a panel discussion at a scheduled meeting of an established and recognized membership organization that has regular meetings; however, the cost of the entertainment, food, refreshments, meals, amenities, or beverages shall be paid for or reimbursed by the membership organization and the per person cost of the event, which shall not exceed fifty dollars ($50.00) per person per day, excluding sales tax and gratuity. The value of any such gift may not be reduced below such monetary limitation by dividing the cost of the gift among two (2) or more lobbyists or employers of lobbyists.

Consequently, unless the travel expenses, meals or lodging associated with an appearance, speech or article fall within either of these exceptions, a member of the General Assembly is prohibited from accepting any of these items from a lobbyist or the employer of a lobbyist pursuant to Tenn. Code Ann. § 3-6-305(a). However, it should be noted that neither Tenn. Code Ann. § 3-6-304 nor § 3-6-305 would not prohibit a member of the General Assembly from accepting such travel expenses, meals or lodging from an individual or entity that is not an employer of a lobbyist, a lobbyist or acting at the direction of an employer of a lobbyist or a lobbyist.

You also ask whether there is any state law that would prohibit a member of the General Assembly from speaking to groups if no honorarium or any other form of payment or compensation is received. We are not aware of any law that would prohibit a member of the General Assembly from speaking to any group, either in such member's capacity as a public official or as a private business person, professional or tradesperson, regardless of whether an honorarium or any other form of payment is received by the member.

3. Your final question asks whether it would violate any provision of state law for a member of the General Assembly to advocate, lobby, or influence legislative or administrative action on behalf of clients for grants, funding, contracts or favorable rulings from municipalities, counties, other states or the federal government. Again, we are not aware of any law that would prohibit a member of the General Assembly from engaging in such activities on behalf of clients without compensation. Additionally, while Tenn. Code Ann. § 2-10-123(a) prohibits a member of the General Assembly from knowingly receiving a fee or other form of compensation for providing consulting services from any person or entity other than from the state, a county or municipality, "consulting services," as discussed in section 1, is limited to advising or assisting a person or entity in influencing legislative or administrative action "relative to Tennessee state government" or advising or assisting a person or entity in "maintaining, applying for, soliciting or entering into a contract with the state of Tennessee." Accordingly, a member of the General Assembly would not be prohibited from receiving a fee or other compensation from a person or entity other than the state, a county or municipality, for providing consulting services, as that term is defined in Tenn. Code Ann. § 2-10-122(1), in connection with counties, municipalities, other states and the federal government.

Tenn. Code Ann. § 2-10-128(a)(1) requires each member of the General Assembly and the member's spouse to disclose annually in writing the major source or sources of private income of more than two hundred dollars ($200), including, but not limited to, offices, directorships, and salaried employments of the person making disclosure and such person's spouse. Such disclosure shall include the name and the address of any entity that provides a source of income of more than two hundred dollars ($200). Thus, to the extent any fees or other compensation received for consulting services provided to a county, municipality, other state or the federal government are more than two hundred dollars ($200), a member of the General Assembly would be required to disclose such compensation. Additionally, Tenn. Code Ann. § 2-10-129 specifically requires a member of the General Assembly or the member's spouse to disclose any fee, commission or other form of compensation in excess of two hundred dollars ($200) received for consulting services on contracts to which the state of Tennessee is not a party, and for which such consulting services are

to be rendered outside the state of Tennessee.

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