



Legislative Services Office

Idaho State Legislature

Eric Milstead
Director

Serving Idaho's Citizen Legislature

To: Members of the Citizens' Committee on Legislative Compensation
Debora Kristensen, Chair, Bill Daniels, John Goedde, Reed Larsen, Eva Gay Yost, and William F. "Bud" Yost

From: Eric Milstead, Legislative Services Office

Date: February 29, 2016

Re: Legislators' receipt of honoraria

The Legislative Services Office recently requested an opinion from the State Attorney General on the question of whether Idaho law permits members of the Legislature to receive honoraria for their service on State part-time boards and commissions.

Enclosed is the responsive Attorney General Opinion, which finds that a legislator filling a "legislative position" on a State board or commission may only receive an honorarium for service on a board or commission if the receipt of an honorarium has been recommended by the Citizens' Committee on Legislative Compensation. A legislator serves in a "legislative position" if there is a statutory requirement that the board or commission have one or more legislative members and that legislator is appointed to satisfy that requirement. For example, Idaho Code Section 57-718 directs the Endowment Fund Investment Board to include in its membership both a senator and a representative.

It is worth emphasizing that legislator positions on State boards and commissions are statutorily created because of the unique expertise and oversight legislators bring to such boards and commissions. A modest honorarium is equitable compensation for this service and is consistent with compensation received by other non-legislator members of such boards and commissions. Up until this time, legislators filling "legislative positions" on State boards and commissions have routinely received honoraria for their service. We simply had no knowledge that such practice may not be permitted by law.

Now that we have a fuller understanding of the law, on behalf of Senate President Pro Tempore Brent Hill and Speaker of the House Scott Bedke, I respectfully request that the Citizens' Committee on Legislative Compensation recommend in its next report that legislators who are appointed to fill "legislative positions" on State boards and commissions be eligible to receive honoraria for that service. However, as the Attorney General Opinion notes, a legislator is precluded from receiving an honorarium for the length of his or her term in which the "legislative position" was created. Therefore, in making such recommendation, the Citizens' Committee may want to clarify that a legislator is ineligible to

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receive the honorarium during the two-year term the legislator was a member of the Legislature that statutorily created the position on the board or commission.

On behalf of the Pro Tempore and the Speaker, thank you for your consideration of this request.

cc: Senator Brent Hill, Representative Scott Bedke

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STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

LAWRENCE G. WASDEN

January 8, 2016

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Delivered via Statehouse Mail and Electronic Mail

Re: Request for Legal Opinion – Honorariums for Current Legislators Also Serving Part-Time on a State Board or Commission

Dear Director Milstead:

This letter is in response to your request of December 15, 2015, for a legal opinion from the Office of the Attorney General on the following question:

Does Idaho law permit a member of the Legislature to receive an honorarium from a State part-time board or commission while the legislator is a member of such part-time board or commission?

The Idaho Constitution and applicable statutes provide three fact dependent answers to this question. Depending on the circumstances of the appointment and service on a State board or commission, a legislator may:

1. Be limited to only his or her compensation as a legislator;
2. Be permitted to receive the honorarium if not serving in his or her legislative capacity; or
3. Be prohibited from receiving an honorarium for service on a recently created State board or commission.

Determining which of these scenarios applies requires an analysis of the State board or commission and the position to which a legislator is appointed. Set forth below is an analysis of each scenario.

1. Legislators filling legislative positions on State boards and commissions may only receive an honorarium for service on a Board or Commission if it has been approved by the Citizens' Committee on Legislative Compensation.

Article III, Section 23 of the Idaho Constitution states the "legislature shall have no authority to establish the rate of its compensation and expense by law."¹ The Citizens' Committee on Legislative Compensation (CCLC) is required to "establish the rate of compensation and expenses for services to be rendered by members of the legislature during the two-year period commencing on the first day of December of such year." Art. III, Sec. 23.² Idaho law also provides that "no member of the legislature of the state of Idaho shall receive any compensation for services rendered or expenses incurred as a legislator, except as set by the committee (CCLC)." Idaho Code Section 67-406b (emphasis added).

A legislator serves in a legislative capacity when the State board or commission is statutorily required to have one (1) or more legislative members and the legislator is appointed to satisfy that requirement. There are numerous examples of State boards and commissions that require legislative membership. For example, the Idaho Technology Authority must have both a representative and a senator. See Idaho Code Section 67-5745B. If a legislator is filling a State board or commission position based upon the requirement that it be filled by a legislator, then any payment, or honorarium,³ in excess of payment as a legislator should be approved or permitted by the CCLC.⁴ Currently, a legislator would likely be entitled to a "vouchered expense allowance" payment for "reimbursement of actual travel expenses... in a manner consistent with policy... with prior approval of the President Pro Tempore of the Senate or the Speaker

¹ Article III, Section 23 also authorizes the creation of the Citizens' Committee on Legislative Compensation (CCLC), which is a six member committee with three members appointed by the Governor and three members appointed by the Supreme Court. The CCLC members must be Idaho citizens that are not paid public officials. Art. III, Sec. 23.

² Title 59, Chapter 5, Idaho Code address the salaries of "elective officers". While the term "elective officer" is not specifically defined in Title 59, Chapter 5, Idaho Code, the Idaho Constitution lists "executive officers" to include the Governor, Lieutenant Governor, Secretary of State, State Controller, State Treasurer, Attorney General, and Superintendent of Public Instruction. Art. IV, Sec. 1. Title 59, Chapter 5, Idaho Code seems to use the terms "elective" and "executive" interchangeably, which is consistent with Article IV, Section 1 and Idaho Code Section 67-801 (State Executive Officers Enumerated). As a result, Title 59, Chapter 5, Idaho Code, including the compensation restrictions set forth in Idaho Code Sections 59-511 and 59-512, does not apply to members of the Legislature since legislators are not within the scope of "elective officers" for purposes of Title 59, Chapter 5, Idaho Code. This conclusion is reinforced by Article III, Section 23's clear directive that the CCLC sets the legislature's rate of compensation.

³ "Honorarium" is generally defined as "a payment of money or anything else of value made to a person for services rendered" and also as "a gratuitous payment for professional services." See Black's Law Dictionary (10th ed. 2014).

⁴ The CCLC most recently met on May 7, 2014. In establishing the compensation and expenses for legislative services, the CCLC did not specifically address honorariums for part-time service on State boards or commissions. See 2014 CCLC Report and Meeting Minutes available at <http://legislature.idaho.gov/sessioninfo/2014/interim/compensation.htm>.

of the House of Representatives, when the Legislature is not in session." *Report of the Citizens' Committee on Legislative Compensation*, May 7, 2014 ¶ 5.

2. A legislator serving on a State board or commission with no requirement that the service be as a legislator, can likely receive an honorarium as outlined by law.

When a legislator is appointed to serve part-time on a State board or commission in an individual capacity, irrespective of the legislator's status as a legislator, the legislator is acting as a private citizen and not a legislator. When acting as a private citizen the legislator would not be subject to the legislative service compensation rates established by the CCLC and should be able to receive an honorarium in the same manner as his or her fellow board or commission members. The key element in this situation is to ensure that the legislator is not serving in a legislatively designated position.

3. Legislators should not seek an honorarium for service on State boards or commissions created by a Legislature of which he or she was a member during the term for which elected.

A legislator's ability to receive an honorarium for serving part-time on a State board or commission is further limited by Idaho Code Section 59-102, which states it "shall be unlawful for any member of the legislature, during the term for which he was elected, to accept or receive... any office of trust, profit, honor or emolument, created by any law passed by the legislature of which he is a member."⁵ Thus, a legislator serving part-time on a State board or commission, in an individual or legislative capacity, cannot receive an honorarium if the board or commission was created by a law passed by a Legislature of which the legislator was a member. This prohibition has two elements: (1) creation of a position; and (2) during the term elected. This means that a legislator would generally be precluded from receiving an honorarium for the length of his or her term in which the position was created.

As outlined above, determining a legislative board member's eligibility for an honorarium requires a careful examination of the position to which the member is appointed. If necessary, this office can assist in a review of a position upon request. I hope you find this analysis helpful.

Sincerely,



ANDREW J. SNOOK
Deputy Attorney General
Contracts and Administrative Law Division

c: Brian Kane, Assistant Chief Deputy

⁵ Compensation and expense rates established by the CCLC for legislative services rendered cannot conflict with State law.