

State of Louisiana Board of Ethics

In Re: Louisiana Association of Docket No. 2009 - 061
Public Employees Retirement System,
Application for Advisory Opinion

Simoneaux, Dissenting

According to the facts presented by the Louisiana Association of Public Employee's Retirement System (LAPERS) and the Staff, LAPERS is a non-profit association composed of representatives of twenty state and local retirement systems. LAPERS has applied for an advisory opinion on, among other issues, the meaning of an exception to the \$50.00 cap imposed by La. R. S. 42:1115.1 on expenditures by certain persons for food, drink, or refreshments for public servants at a single event.

LAPERS conducts annual educational conferences for its members. It is important to note there is no indication that anyone other than LAPERS pays for all expenses attendant to the educational conference, including meals that are part of the conference's scheduled events. Speakers possessing expertise on the topics addressed at the seminars provide relevant information which fulfills the attendee's annually required educational hours on investments, actuarial science, ethics, fiduciary responsibilities, and generally those laws and regulations that pertain to the given retirement systems.

The request for an advisory opinion was first heard at the January 28, 2009 Board meeting. The undersigned was absent when this matter came before the Board. At the March 25, 2009 meeting, the decision rendered at the earlier meeting was reconsidered. At the latter meeting, the Board affirmed the earlier opinion by a vote of 9 to 1, with the undersigned dissenting as to the exception to the \$50.00 cap for a "gathering held in conjunction with a meeting related to a ...statewide organization of governmental officials or employees".

The Opinion adopted by the Board states in pertinent part:

Section 1115.1E of the Louisiana Code of Governmental Ethics provides an exception to the fifty dollar cap on food and drink,

per event, for a “gathering held in conjunction with a meeting related to a national or regional organization or a meeting of a statewide organization of governmental officials or employees”. Because the trustees of state and statewide retirement systems are public servants, the LAPERS annual educational conference is considered a “gathering held in conjunction with a meeting of a statewide organization of governmental officials or employees”. As such, if an event, paid for by someone other than LAPERS, is part of the scheduled conference activities and open to all attendees of the conference, it is “in conjunction with” the conference. In such an event, the exception in Section 1115.1E is applied and the fifty dollar cap on food and drink, per event, is not applicable.

I dissent from the majority opinion. In my view, it is error to conclude:

“Because the trustees of state and statewide retirement systems are public servants, the LAPERS annual educational conference is considered a gathering held in conjunction with a meeting of a statewide organization of governmental officials or employees”.

The main event is the LAPERS sponsored annual educational conference. It is the concerned meeting of a statewide organization of governmental officials and employees. Therefore it is clear factual error to conclude that the annual educational conference is the “gathering held in conjunction with a meeting related to a...statewide organization of governmental officials or employees”. The proof of this error is that in its request for an advisory opinion LAPERS asks: “If a person other than LAPERS wishes to host a meal for a group of conference attendees on one of the days for which the conference is scheduled, does the \$50 limit apply”. All indications are that LAPERS is always the host of the conference. This is a clear indication that the “gathering held in conjunction with a meeting “of governmental officials or employees is not the main conference or meeting (gathering) of public officials or employees.

The word “conjunction” is defined by Webster’s New College Dictionary as “(1) a joining together or being joined together; union; association; combination (2) an occurring together; coincidence [the conjunction of

events]...” According to La. R.S. 1:3, in interpreting statutes: “Words and phrases shall be read with their context and shall be construed according to the common and approved usage of the language...” Clearly the words “in conjunction with” contemplate two separate and distinct events. Yet the majority opinion reads out of the statute the words “in conjunction with”. It gives no meaning to those words. Instead, it addresses the cap only in the context of a single event, the main annual educational conference sponsored by and paid for by LAPERS.

Using the common usage definition of “in conjunction with,” the statute anticipates that the gathering for which the \$50 limit does not apply is not scheduled as part of the given conference agenda. Rather, the gathering is an event separate and apart from the educational conference of public officials or employees and is held in conjunction with the educational conference by being held in the same time frame and in the same vicinity of the educational conference. So, the legislature, in adopting the exception at issue, was intending a gathering held in conjunction with a conference of public officials, but not as a part of the conference.

Louisiana Civil Code Article 10, dealing with statutory interpretation, provides “When the language of the law is susceptible of different meanings, it must be interpreted as having the meaning that best conforms to the purpose of the law.” It is clear that the Legislature intended to create an exception to the \$50 cap per meal for gatherings that are not part of the conference of public officials. Yet the majority opinion recognizes no such exception.

Comments of the members of the Board during the hearing indicated opposition to the exception to the \$50 cap arising out of policy and philosophic considerations. As a member of the Legislature, I would not have voted in favor of the exception to the cap. However, as a member of this Board, it is my duty to fairly interpret the given text of a statute and not consider the wisdom or merits of the policy, if any, behind the exception.

On many occasions, the courts have noted that it is their duty to interpret the given text of a statute as written, not as members of the court would write it. See *M.J. Farms, LTD v. Exxon Mobil Corporation*, 988 So2d 16, 26 (La. 2008), (“comments that constitute policy considerations ... are more appropriate before the legislative body of this state. As we have observed on many occasions, it is not our duty to determine the wisdom behind the enactment of legislation”); *Wooley v State Farm*, 893 So2d 746,770 (La.2005) , “While we recognize that one may question the wisdom of this decision, it is within the legislature’s prerogative to make this change”; and *Lakeside Imports v. State of Louisiana*, 639 So2d 253, 257 (La. 1994), (“ this court may not sit as a super-legislature to judge the wisdom or desirability of legislative policy determinations . . .”

The power of the Board of Ethics to interpret laws is at least as narrow as the courts. Thus, the majority of the Board should have interpreted the exception to the \$50 cap based on the literal wording of the exception. See La. R. S. 24:177 B (1) (“The text of a law is the best evidence of legislative intent”). Applying that standard would produce an opinion holding that the exception applies to a gathering held at the same proximate time and in the same proximate vicinity of the educational conference, but not as part of that conference.