



SUPREME COURT OF APPEALS
CHARLESTON, WEST VIRGINIA
25305

MARGARET L. WORKMAN
CHIEF JUSTICE

April 30, 2018

Teresa A. Tarr, Counsel
Judicial Investigation Commission
City Center East, Suite 1200 A
4700 MacCorkle Ave., S.E.
Charleston, West Virginia 25304

Dear Ms. Tarr:

This is written in response to the judicial ethics complaint filed against me concerning the purchase with public funds of working lunches for me and my administrative assistant on Court days and administrative conference days.

I would first like to provide the following background information:

When I served on the Court from 1989 until 2000, there was a regularly scheduled time for the lunch break.

When I returned to the Court in 2009, the break time was an ever-changing phenomenon, depending on how long the arguments went and who the chief justice was. I requested that we have some regular time for a lunch break. At some point, one of the other Justices suggested that, rather than having an out-of-Court break, we hear all arguments prior to leaving the bench and have lunch brought in to eat while working on decisions. The purpose of this was to accommodate lawyers who traveled from northern West Virginia or the Eastern Panhandle, as well as litigants who then didn't have to pay additional attorney fees for lawyers sitting around waiting. I don't believe that any decision was ever made formalizing this plan, so much as it just became a practice that was done to promote efficiency.

I prefer having a lunch break; it is a good opportunity to clear out my mind and visit with co-workers. But that was not the consensus of the Court. I would have been very happy to pay for my lunches, but the time required for sending separate cash or credit cards from at least ten people seemed logistically impractical.

As to my administrative assistant, in addition to the regular work hours, she is required to be present anytime I am at the Court. Especially on argument, decision, and administrative conference days, there is often a need to get copies of a brief, a case, or other information from the voluminous amount of material that flows through the Court on a daily basis. Consequently, on Court and administrative conference days, my assistant was not permitted to take an out-of-office break and therefore lunch was also provided to her.

It should also be pointed out that it is a very common practice in many segments of the court system (including, but not limited to, the Mass Litigation Panel, the Juvenile Justice Commission, the lawyer and judicial disciplinary boards, and others) to provide working lunches to the participants. It may be argued that the participants in those groups must come from out of town, but each member of these groups could also pay for their own lunch or leave the meeting for lunch. If it is inappropriate or unethical to provide taxpayer-funded lunches for working sessions of the Court, it must also be so for members of boards and commissions who do so.

My research indicates that the Internal Revenue Service has held that employer-provided lunches are not taxable income if they are working lunches and done for the convenience of the employer. Neither statutory nor other ethics law prohibits such expenditure.

I have given serious consideration to paying back my proportional share of the lunches (as their costs cannot be sorted out individually), but I feel that such reimbursement appears to be an admission of unethical conduct. Because I do not believe it to be unethical, I have not reimbursed the cost. In retrospect, I would not again accept lunches paid by the State, not only because cumulatively, they added up to a substantial expenditure of taxpayer funds; but, even more importantly, because in the context of other indefensible spending by the Court as a whole, the continuation of this practice will not help in rebuilding the public's trust in our institution, which is my primary goal in my remaining time on the Court.

If you need further information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Margaret L. Workman, C.J." The signature is written in a cursive style.

Margaret L. Workman
Chief Justice