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SEC A092-166

May 27, 1992

SUBJECT: USE OF PROPRIETARY VOICE-MAIL SYSTEM

SUMMARY:

A state agency would not be prohibited from utilizing a voice-mail system connecting the agency with courthouse staff.

QUESTION:

The Senior Assistant General Counsel for the Department of Social Services questions:

A proprietary voice-mail system has been developed for members of the legal profession and Court system support personnel in a metropolitan area. Members of the legal profession may subscribe for a stated monthly fee. The system allows for communication with Courthouse support staff and the sending and receiving of messages between subscribing participants; nonsubscribers may only leave messages for participants. The service has been offered at no cost to the General Counsel's staff of the agency. She questions whether acceptance of this system at no cost violates the Ethics Reform Act. She also questions whether suggestions by staff members to non-subscribers that a more prompt response can be had through this system violate the law.

DISCUSSION:

This opinion is rendered in response to a letter dated March 12, 1992 requesting an opinion from the State Ethics Commission. The Commission's jurisdiction is limited to the applicability of the

Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act No. 248 of 1991; Section 8-13-100 et. seq., as amended, 1976 Code of Laws). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation.

The Ethics Reform Act generally prohibits the utilization of a public official's or employee's public position to obtain financial gain for himself. Corporate support of public agency activities has been reviewed in Advisory Opinions SEC AO92-002, SEC AO92-041, and SEC AO92-052. In those opinions, the Commission advised that private business could support agency activities through provision of equipment and services without charges. The Commission does not believe that private industry is prohibited from providing financial or equipment support to assist public agencies in carrying out their mandated responsibilities. Reference to the above opinions should be utilized when appropriate regarding these activities.

Based upon the facts as submitted, it does not appear that the use of such voice-mail system would violate the law. Also, the mention of the availability of the service to non-subscribers would not appear to violate the statute inasmuch as agency employees receive no financial benefit and have no financial interest in such a business providing the system.

The State Ethics Commission does, however, recommend that the Division of General Services be contacted concerning the applicability of the Consolidated Procurement Code to this situation.