

SUBJECT: APPLICATION OF ETHICS REFORM ACT TO SHERIFFS AND THEIR EMPLOYEES

SUMMARY:

Sheriffs are advised to reimburse the county for use of a publicly-assigned vehicle in election campaign activities. For the purposes of the Ethics Reform Act, deputy sheriffs are considered public employees and would be subject to restrictions as public employees. The nepotism provision applies to sheriffs and other elected officials. A sheriff seeking reimbursement of expenses for out-of-state speaking engagements would have to seek approval from the Chief executive of the county.

QUESTION:

The Executive Director of the Sheriffs' Association has raised several questions affecting the Sheriffs/members. He states:

"1. Section 8-13-765 prohibits the use of government property in an election campaign. For all practical purposes, the sheriff and other certain county or city officials are considered "on duty" 24 hours a day, 365 days a year. The necessity for the sheriff to be in constant communication with his office, and his need to respond to any unforeseen emergency, requires that he utilize his police vehicle at all times.

Bearing this in mind, would driving their vehicles from their offices to campaign related activities be a violation of this section?

2. Deputy sheriffs serve at the sheriff's pleasure, *Rhodes v. Smith* (1979) 273 SC 12, 254 SE 2d 49. They act as the sheriffs personally when fulfilling their duties. *Rutledge v. Small* (1939) 192 SC 254, 6 SE 2d 260. Generally, they are considered public officials.

For the purpose of this Act, are deputy sheriffs considered public officials subject to the same restrictions, disclosures, etc. as the sheriff, or are they considered public employees subject to the restrictions as provided in the Act? Example, must a DARE officer teaching anti-drug programs in the schools refuse lunch when invited to speak before a civic organization or when offered lunch at the school in which they teach?

3. Under current law, county anti-nepotism ordinances do not apply to sheriffs, solicitors, clerks of court or coroners. *Rhodes v. Smith* (1979) 273 SC 13, 254 SE 2d 49. Under the new provisions of the Act, it is assumed that county anti-nepotism ordinances are still inapplicable. Would, however, section 8-13-750 of the Act apply to these county officials?

Examples:

A. Sheriff's son is hired by the sheriff and works for sheriff as a deputy. He is not directly supervised by the sheriff, nor does sheriff participate in any disciplinary action that may occur.

B. Sheriff's wife works as secretary for the sheriff in a non paid position on a voluntary basis.

Would it now be necessary to terminate these individuals; or is future employment of such new personnel prohibited by the statute.

4. Section 8-17-715 requires a public official to receive prior written approval from a superior before incurring expenses out of the state. To whom, if anyone, should the sheriff make this request? As a constitutional officer, should this request be made directly to the governor, or should such requests be made at the county level to council"?

DISCUSSION:

This opinion is rendered in response to a letter dated November 22, 1991 requesting an opinion from the State Ethics Commission. The Commission's jurisdiction is limited to the applicability of the State Ethics Act (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.

As to the first question, the State Ethics Commission advised in Advisory Opinion 90-035 that Constitutional Officers are assigned vehicles as a perquisite of office to assist these officers in the conduct of their position responsibilities. The Commission advised that a log of vehicle use be maintained noting the mileage for election campaign purposes. Reimbursement at the standard mileage rate for those activities which are deemed to be political in nature should be made to the public agency. Section 8-13-765(A) provides:

(A) No person may use government personnel, equipment, materials, or an office building in an election campaign. The provisions of this subsection do not apply to a public official's use of an official residence.

* * * *

Further, Section 8-13-1346 provides:

A person may not use or authorize the use of public funds, property, or time to

influence the outcome of an election. This section does not prohibit the incidental use of time and materials for preparation of a newsletter reporting activities of the body of which a public official is a member.

Since there are no exceptions for the use of assigned vehicles, the State Ethics Commission would reaffirm its earlier Advisory Opinion 90-035 and advise that a log be maintained and that the county be reimbursed for mileage utilized for election campaigning.

With regards to the second question, Section 8-13-100(25) defines public employee as:

"Public employee" means a person employed by the State, a county, a municipality, or a political subdivision thereof

The State Ethics Commission would advise that, for the purposes of the Ethics Reform Act of 1991, sheriff's deputies are considered public employees. Their actions and restrictions should be considered in accord with that determination.

Section 8-13-750 provides:

(A) No public official, public member, or public employee may cause the employment, appointment, promotion, transfer, or advancement of a family member to a state or local office or position in which the public official, public member, or public employee supervises or manages.

(B) A public official, public member, or public employee may not participate in an action relating to the discipline of the public official's public member's, or public employee's family member.

Section 8-13-750 has applicability to all public officials, members or employees with no exceptions for sheriffs, solicitors or clerks of court. The provisions of Section 8-13-750 apply to actions taken after January 1, 1992. Thus, this does not prohibit a family member from continuing in employment, if employed however, prior to January 1, 1992, the Sheriff is prohibited from taking any action regarding such family member's employment, appointment, promotion, transfer, advancement or disciplinary action. As to a sheriff's wife doing volunteer work in an unpaid capacity, such work would not be prohibited since it has no economic impact on the family member. As to the anti-nepotism statute, there are no exceptions for applicability to sheriffs, solicitors, clerks of court or coroners.

With regard to the last question, Section 8-13-715 provides for written approval for out of state travel reimbursement. Section 8-13-715 (5) provides for approval by the chief executive of the governmental entity for all cases except statewide constitutional officers or members of the General Assembly. The exact person from whom such approval must be obtained will depend upon each county's administrative makeup. That person would probably be the county administrator or manager.

