

SUBJECT: ACCEPTANCE OF GIFTS BY COUNTY OFFICIALS AND EMPLOYEES

SUMMARY:

County officials who receive anything of value from a lobbyist principal are required to disclose such transaction on the Statement of Economic Interests. Anything of value given by a donor who would not give it but for the recipient's public position, or who is regulated by or seeking a contractual arrangement with the recipient's agency is required to disclose such time on the Statement of Economic Interests. Whether a particular thing of value is given to influence an official action must be determined on a case by case analysis.

QUESTION:

The Chairwoman of Richland County Council has questioned the acceptance of gifts from businesses and civic organizations regulated by Richland County government. She states that council members occasionally receive small mementoes(e.g., coffee mugs, ice scrapers, pencils, pens,) as well as meals from potential vendors, county and state agencies, and profit/not-for-profit corporations. She questions whether these items should be disclosed under current law. She further questions the application of the new law to this issue.

DISCUSSION:

This opinion is rendered in response to a letter dated October 24, 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.

In Advisory Opinion SEC 91-016, the State Ethics Commission addressed the issue of accepting anything of value from a regulated business. That opinion referenced Section 8-13-20(i) which defines anything of value as a thing valued at more than \$10 but excludes food and beverage consumed at the time of presentation. Thus, under the current ethics statute(Act No. 191 of 1975) the receipt of the referenced kinds of mementoes and meals would not be prohibited.

The Ethics Reform Act of 1991, effective January 1, 1992 however, has some rather significant changes from the current law. Section 8-13-705 prohibits both the offer and acceptance of anything of value to influence the actions of a public official, public member, or public employee. Section 8-13-705(A) provides:

- (A) person may not, directly or indirectly, give, offer, or promise anything of value to a public official, public member, or public employee with the intent to:
 - (1) influence the discharge of a public official's, public member's, or public employee's official responsibilities;
 - (2) influence a public official, public member, or public employee to commit, aid in

committing, collude in, or allow fraud on a governmental entity; or
(3) induce a public official, public member, or public employee to perform or fail to perform an act in violation of the public official's, public member's, or public employee's official responsibilities.

Anything of value is defined in Section 8-13-100(1) as:

- (1)(a) "Anything of value" or "thing of value" means:
- (i) a pecuniary item, including money, a bank bill, or a bank note;
 - (ii) a promissory note, bill of exchange, an order, a draft, warrant, check or bond given for the payment of money;
 - (iii) a contract, agreement, promise, or other obligation for an advance, a conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of money;
 - (iv) a stock, bond, note, or other investment interest in an entity;
 - (v) a receipt given for the payment of money or other property;
- (vi) a chose-in-action;
- (vii) a gift, tangible good, chattel, or an interest in a gift, tangible good, or chattel;
 - (viii) a loan or forgiveness of indebtedness;
 - (ix) a work of art, an antique, or a collectible;
 - (x) an automobile or other means of personal transportation;
 - (xi) real property or an interest in real property, including title to realty, a fee simple or partial interest in realty including present, future, contingent, or vested interests in realty, a leasehold interest, or other beneficial interest in realty;
 - (xii) an honorarium or compensation for services;
 - (xiii) a promise or offer of employment;
 - (xiv) any other item that is of pecuniary or compensatory worth to a person.
- (b) "Anything of value" or "thing of value" does not mean:
- (i) printed informational or promotional material, not to exceed ten dollars in monetary value;
 - (ii) items of nominal value, not to exceed ten dollars, containing or displaying promotional material;
 - (iii) a personalized plaque or trophy with a value that does not exceed one hundred fifty dollars;
 - (iv) educational material of a nominal value directly related to the public official's, public member's, or public employee's official responsibilities;
 - (v) an honorary degree bestowed upon a public official, public member, or public employee by a public or private university or college;
 - (vi) promotional or marketing items offered to the general public on the same terms and conditions without regard to status as a public official or public

employee; or
(vii) a campaign contribution properly received and reported under the provisions of this chapter.

Section 8-13-710(A) provides:

(A) Unless provided by subsection (B) and in addition to the requirements of Chapter 17 of Title 2, a public official or public employee required to file a statement of economic interests under Section 8-13-1110 who accepts anything of value from a lobbyist's principal must report the value of anything received on his statement of economic interests pursuant to Section 8-13-1120(A)(9).

Thus, anything of value received from a lobbyist principal as defined in Section 2-17-10(14) is to be reported on the Statement of Economic Interests.

Further, Section 8-13-710(B) provides:

(B) A public official, public member, or public employee required to file a statement of economic interests under Section 8-13-1110 who receives, accepts, or takes, directly or indirectly, from a person, anything of value worth twenty-five dollars or more in a day and anything of value worth two hundred dollars or more in the aggregate in a calendar year must report on his statement of economic interests pursuant to Section 8-13-1120 the thing of value from:

- (1) a person, if there is reason to believe the donor would not give the thing of value but for the public official's, public member's or public employee's office or position;
- (2) a person, or from an officer or director of a person, if the public official, public member, or public employee has reason to believe the person:
 - (a) has or is seeking to obtain contractual or other business or financial relationships with the public official's, public member's, or public employee's governmental entity;
 - (b) conducts operations or activities which are regulated by the public official's, public member's, or public employee's governmental entity.

(C) Nothing in this section requires a public official, public member, or public employee to report a gift from a parent, grandparent, or relative to a child, grandchild, or other immediate family member for love and affection.

This section requires disclosure of anything of value worth \$25 or more in a day or \$200

in the aggregate in a calendar year if the gift is from a person who is giving the thing of value because of the officeholder's position, someone who is a potential contractor or someone whose activities are regulated by the officeholder's agency.

Those persons required to file a Statement of Economic Interests are required by Section 8-13-710 (A) to report anything of value received from a lobbyist principal. Anything of value worth more than \$25 in a day or \$200 in a calendar year is to be disclosed if the thing is received from a donor where there is reason to believe the donor would not give it except for the person's public position, or if the donor is either regulated by the recipient's agency or is seeking a business relationship with that agency.