

SUBJECT: ACCEPTANCE OF MEALS FROM PROFESSIONAL ASSOCIATIONS

SUMMARY:

A Board Member or agency Executive Director would not be prohibited from accepting a meal incidental to giving a speech in an official capacity at a meal function where the meal is provided to all other persons participating in the same event. Both may accept benefits from an association to which they belong, however, the State Ethics Commission advises that if they accept anything of value from a regulated industry association, they shall disclose on their Statement of Economic Interests the receipt of such thing of value which exceeds \$25 per day or \$200 in a calendar year.

QUESTION:

The Executive Director of the State Board of Cosmetology has requested an opinion concerning the acceptance of meals by Board members at a function sponsored by a professional association which retains a lobbyist. He further questions whether a meal could be accepted in connection with a speech to a professional association which does not retain a lobbyist. He also asks if there is any restriction if the Board member does not speak but attends a function sponsored by a professional association which does not retain a lobbyist. His request also concerns his own acceptance of meals under the same circumstances.

DISCUSSION:

This opinion is rendered in response to a letter dated December 2, 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.

Section 2-17-90 restricts the provision of food and meals by a lobbyist principal. The Secretary of State's Office should be contacted concerning the impact of that section on a Board Member with regard to attendance at an association function where a lobbyist is retained by that association. The State Ethics Commission calls attention to Section 8-13-710(A) which requires disclosure on a Statement of Economic Interests of the acceptance of anything of value from a lobbyist principal.

As to Board Members or the Executive Director accepting a meal when attending a function either as a speaker or as an attendee, the State Ethics Commission advised in Advisory Opinion SEC AO92-023 that a public employee would not be prohibited from accepting a meal incidental to giving a speech in an official capacity at a meal function where the meal is provided to all other persons participating in the same event. Section 8-13-715 addresses the provision of anything of value to a public official, public member, or public employee when speaking in an official capacity.

Section 8-13-715 provides in part as follows:

A public official, public member, or public employee acting in an official capacity may not receive anything of value for speaking before a public or private group. Notwithstanding the limitations of Section 2-17-90, a public official or public member may receive payment or reimbursement for actual expenses incurred for a speaking engagement. The expenses must be reasonable and must be incurred in a reasonable time and manner in which to accomplish the purpose of the engagement...

Attendance of a Board Member or the Executive Director at a function sponsored by a professional organization of which they may be a member would not be prohibited if they pay such fees and receive those benefits received by all other members of such association. A Board Member or Executive Director attending a function sponsored by a regulated industry association of which they are not a member are advised of the provisions of Sections 8-13-705 and 8-13-710(B).

Section 8-13-705 provides in part as follows:

* * * *

(B) A public official, public member, or public employee may not, directly or indirectly, knowingly ask, exact, solicit, seek, accept, assign, receive, or agree to receive anything of value for himself or for another person in return for being: (1) influenced in the discharge of this official responsibilities;

* * * *

(3) induced to perform or fail to perform an act in violation of his official responsibilities.

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The Commission further notes Section 8-13-710(B) which 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 SEC 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.

Acceptance of anything of value from a regulated association is not a per se violation of the Ethics Reform Act. In accordance with Section 8-13-710(B), the acceptance of anything of value given by a person whose activities are regulated by the recipient's agency is to be reported on the Statement of Economic Interests if it exceeds \$25 per day or \$200 in a calendar year. Whether acceptance of such thing of value is a violation of Section 8-13-705 would depend on the circumstances of such offer or receipt of the thing of value.