

SUBJECT: VENDOR PAYING TRAVEL COSTS TO VIEW MANUFACTURING PLANT

SUMMARY:

Travel expenses for a review team to travel to view a manufacturing facility may be paid by vendors only if required in the RFP and provided that such expenses are in accordance with state travel policies and regulations.

QUESTION:

The Director of the Division of Motor Vehicle Management has requested an opinion on the following situation:

The State annually solicits bids and awards contracts for numerous classes of vehicles, including police pursuit vehicles. The specifications package for police pursuit sedans includes a requirement that the dealer awarded the contract must provide transportation to the manufacturing plant. These vehicles are specially manufactured to meet the needs of numerous law enforcement organizations and a model is inspected before all orders are filled.

Can State employees accept payment for transportation, lodging and meals to a manufacturing plant from an automotive dealer (who has already been awarded a contract) if this requirement is a part the State's procurement specifications?

DISCUSSION:

This opinion is rendered in response to a letter dated December 13, 1991 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.

In prior advisory opinions, the State Ethics Commission has advised against travel expenses being paid by vendors or potential vendors unless such inspection trips are specified in RFP documents.

The Commission calls attention to Section 8-13-705(A) and (B) which provides:

- (A) 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.

(B) A public official, public member, or public employee may not, directly or indirectly, knowingly ask, demand, 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 his official responsibilities;

(2) influenced to commit, aid in committing, collude in, allow fraud, or make an opportunity for the commission of fraud on a governmental entity; or

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

In Advisory Opinion SEC 89-011, the State Ethics Commission advised against the receipt of travel expenses from a potential vendor unless the inspection trip is specifically included in the RFP documents. Based upon the specifications being included in the RFP, it appears that all potential vendors would be required to provide travel costs associated with the inspection visit to the demonstration location. Since there does not appear to be any undue influence which could be generated through a requirement for all potential vendors to provide the travel costs involved, the State Ethics Commission would advise that travel, meals, and accommodations be in accordance with the State travel policies and regulations.