

SUBJECT: HIGHWAY COMMISSIONERS AND KEY STAFF AS GUESTS OF
AREA CHAMBER OF COMMERCE

SUMMARY:

Highway Commissioners and key staff members are not prohibited from attending a function as guests of an area Chamber of Commerce unless such invitation is given to influence their official actions. If accepted, Commissioners or members are required to disclose such attendance on their Statement of Economic Interests. The Secretary of State's Office should also be contacted concerning the acceptance of the invitation.

QUESTION:

The Executive Director of the Department of Highways and Public Transportation questions whether the Highway Commissioners and key staff members may attend a weekend outing paid for by the Trident Chamber of Commerce. The costs include lodging, meals, and golf. There is usually a public meeting that has been advertised with the Commission attending to respond to inquiries from the public.

DISCUSSION:

This opinion is rendered in response to a letter dated January 16, 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.

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

(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.

Commissioners and members of the Highway Department would not be prohibited from accepting an invitation from an area Chamber of Commerce except when such invitations are intended to influence. Absent such intent to influence, the State Ethics Commission does not believe that such invitations to a function by an area Chamber of Commerce are prohibited. Those officials or employees of the Department who are required to file a Statement of Economic Interests are reminded of the provisions of Section 8-13-710(A) and (B) which provide:

(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).

(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.

Section 8-13-710 does not prohibit the acceptance of anything of value, but instead requires disclosure of anything of value received from a lobbyist principal. If the host group is not a lobbyist principal, the acceptance of anything of value worth \$25 or more is required to be disclosed on the Statement of Economic Interests.

The State Ethics Commission advises that the Secretary of State's Office be contacted concerning the impact of the lobbyist and lobbyist principal provisions regarding this situation.

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