

SUBJECT: ETHICS REFORM ACT APPLICABILITY TO PATRIOTS POINT

SUMMARY:

(1) An employee may contract to do custom paintings for veterans groups consistent with the off-duty employment guidelines. (2) An employee may receive royalties for books authored consistent with the off-duty guidelines and provided he does not utilize his position regarding purchases by the agency gift shop. (3) 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. A meal at a function at which the employee would not be speaking is not prohibited but must be disclosed on the Statement of Economic Interests. (4) The Director of Exhibits is advised to follow the procedures of Section 8-13-700(B) on matters affecting his sister's contracting with the agency. (5) A family member is prohibited by Section 8-13-750 from being hired, even if on a temporary basis, to a position which a public officeholder supervises or manages.

QUESTION:

The Executive Director of Patriots Point asks:

- (1) Can a state employee at Patriots Point contract with veterans reunion groups to complete custom paintings or other artwork in his free time, usually \$300-500 per painting?
- (2) Can a Patriots Point employee accept royalties on books authored and sold exclusively by a publishing company in Montana. The books were sold prior to the employee's employment with the agency. The employee is not connected with the publishing company's marketing efforts?
- (3) Can a Patriots Point employee accept a meal when invited by a veterans reunion group to speak at a banquet or when invited to attend but not to speak?
- (4) Can the Director of Exhibits contract with his sister, a certified professional artist, for custom paintings or other artwork?
- (5) Can a family member be hired on a temporary, part-time basis for a period not to exceed 120 days?

DISCUSSION:

This opinion is rendered in response to a letter dated January 22, 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.

In prior advisory opinions, the State Ethics Commission has advised that a public employee may engage in outside employment consistent with established guidelines: (1) that no public materials or equipment are utilized, except as provided by Section 8-13-700(A), (2) such work is engaged in on the employee's own time, (3) the work does not interfere with the needs of the agency, and (4) the public position is not utilized to obtain or continue the employment. Provided such work is done consistent with those guidelines, the Commission knows of no reason why the employee could not contract with a veterans reunion group.

As to the second question, Section 8-13-700 provides:

(A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business

with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use which does not result in additional public expense.

(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a member of his immediate family an individual with whom he is associated, or a business with which he is associated shall:

(1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;

* * *

(3) if he is a public employee, he shall furnish a copy of the statement to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he shall take the action prescribed by the State

Ethics Commission;

Thus, the employee may not take action regarding purchases of his books by the Gift Shop or otherwise utilize his position to market his books. The employee would not be prohibited from accepting royalties from the books that he has authored in his off-duty hours consistent with the off-duty employment guidelines.

As to the third question, in Advisory Opinion SEC AO92-023, the State Ethics Commission advised that a public employee may accept a meal incidental to giving a speech when such meal is given to all other participants. The Commission knows of no reason why a public employee could not accept an invitation to attend a veterans reunion banquet when he is not required to speak, however, if required to file a Statement of Economic Interests, the value of any such meal and entertainment of \$25 or more per day or \$200 or more per calendar year must be thereon reported.

As to the fourth question, the State Ethics Commission has advised in prior advisory opinions against a public officeholder taking action on a matter which affects a close family member. The Commission would advise that the Director of Exhibits follow the procedures of Section 8-13-700(B) on such contracts to allow his superior to make such a contractual decision.

As to the fifth question, 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.

Thus, a family member may not be hired, even on a temporary basis, to a position which the public officeholder supervises or manages. Family member is defined in Section 8-13-100(15) as:

- (a) the spouse, parent, brother, sister, child, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild; or
- (b) a member of the individual's immediate family.

Immediate family is defined in Section 8-13-100(18) as:

- (a) a child residing in a candidate's, public official's, public member's, or public employee's household;
- (b) a spouse of a candidate, public official, public member, or public employee; or
- (c) an individual claimed by the candidate, public official, public member, or public

employee, or the candidate's, public official's, public member's, or public employee's spouse as a dependent for income tax purposes.