

SUBJECT: RECEIPT OF ARTIST PROOFS FROM MIGRATORY WATERFOWL COMMITTEE BY PUBLIC OFFICEHOLDERS

SUMMARY:

The State Ethics Commission advises that artist proofs may be distributed to public officeholders by the Migratory Waterfowl Committee. The value to be reported may be established at the same rate as the prints to be generally sold to the public.

QUESTION:

The Director of Administrative Services, who is administratively responsible for the administration of the Migratory Waterfowl Committee, questions the distribution of artists proof prints. The Committee is responsible for conducting an annual print contest and selecting a painting to be processed into prints to be sold with proceeds then benefitting Ducks Unlimited. The artist is required to provide 65 artists proofs which are then distributed to Committee members, state employees, legislators, and the general public in appreciation for their support of waterfowl habitat protection. He questions whether this procedure can continue, and if so, what value is to be assigned to an artist's proof. He also questions how the receipt of the proofs are to be reported by an employee who is not required to file a Statement of Economic Interests.

DISCUSSION:

This opinion is rendered in response to a letter dated January 29, 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.

The State Ethics Commission advises that the distribution of the Artist's Proofs is not prohibited by law unless given to influence an officeholder in the performance of his position responsibilities. Section 8-13-705 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

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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.

Absent such attempt to influence an official action of a public officeholder, the State Ethics Commission does not believe that the presentation of such prints is prohibited. As to the second question, the Commission advises that the such prints be reported at the value placed on the public sale prints.

There is no requirement for reporting the acceptance of things of value received by a public employee who is not required to file a Statement of Economic Interests.