

SUBJECT: APPLICABILITY OF ETHICS REFORM ACT TO CITY ACTIVITIES

SUMMARY:

(1) A Police Barbecue may provide proceeds to a flower fund and to maintenance of the Police Cabin. (2) Hunting and fishing invitations may be accepted unless offered to influence official actions. (3) Rides, consultant studies and Christmas gifts from developers are not prohibited unless given to influence official actions. (4) Employees attending professional meetings, employee relations programs, or wellness activities may accept promotional items. (5) The City may seek reduced rates for dental care and/or eye care for employees. (6) A City employee may receive a meal at a function when speaking in an official capacity and may not accept anything of value except as provided in the Act. (7) An employee judging a school or civic event may accept a gift provided it is not given to influence official actions.

QUESTION:

The City Manager for Florence poses a number of questions:

(1) Funds from the annual Police barbecue are used for the flower fund(buying flowers for police employees and their immediate families during illness or death) and the Police Cabin (maintenance, etc.). Is this activity still permissible?

(2) Members of the city staff are invited to the annual NCNB Dove Hunt. Is attendance prohibited? What about other corporate events? What about invitations to hunt or fish on other's lands?

(3) Can employees of the Planning Staff or other departments ride with developers to view sites? Can we receive advice and/or free copies of studies from consultants? Can our Planning Director purchase a meal for a Planning Commissioner with his own money? Can any Department or Division accept a Christmas gift which is sent to the entire office, i.e., a box of pecans to the Planning Department from a developer?

(4) When attending an authorized business related professional meeting where vendors provide gifts to all participants, can the participating employee receive these items?

(5) Can the City receive free promotional items from an outside agency to be given out to the employees in conjunction with employee relations programs or wellness activities?

(6) Can the City seek dental or eye plans at a reduced (discounted) rate for employees from area eye care and/or dental providers?

(7) When a City employee is asked to speak at a meal function or serve as a judge for a civic or school competition, is any kind of gift acceptable?

DISCUSSION:

This opinion is rendered in response to a letter dated February 26, 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.

As to the first question, the State Ethics Commission knows of no reason why a Police Barbecue could not be held with funds derived therefrom being utilized for a flower fund or maintenance of the Police Cabin.

As to the second question, the State Ethics Commission calls attention to the provisions of Section 8-13-705 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.

City employees or officials would not be prohibited from accepting invitations to hunt and/or fish except when such invitations are intended to influence. Absent such intent to influence, the State Ethics Commission does not believe that such invitations to hunt and/or fish are prohibited. Those City employees and/or officials 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.

If the invitation is from a commercial source which charges a fee or where lodging and/or meals are provided, such valuation of those items is to be disclosed on the Statement of Economic Interests. If required in accordance with Section 8-13-710, and where the invitation involves a noncommercial source, such as a farm pond or invitation to hunt on private property, the source of the invitation should be disclosed without attempting to disclose a valuation of such invitation.

As to the third series of questions, the receipt of rides, consultant studies, or Christmas gifts are outlined in the provisions of Section 8-13-705 and 8-13-710 as discussed above. The definition of anything of value excepts promotional items of less than ten dollars in value, printed informational or promotional material under ten dollars in value, educational material of a nominal value directly related to the recipient's official responsibilities, and promotional or marketing items offered to the general public on the same terms and conditions without regard to the recipient's status as a public officeholder.

There is no restriction on a Planning Director purchasing a meal with his own funds for a Planning Commissioner.

As to the fourth question, the State Ethics Commission advised in Advisory Opinions SEC AO92-039 and SEC AO92-061 that employees may attend hospitality and meal functions at conferences which are vendor-sponsored if provided on the same basis to all program participants. Promotional

or educational items provided by vendors in accordance with the response to the third series of questions would not be prohibited.

As to the fifth question, the State Ethics Commission knows of no reason why the City could not distribute promotional items as provided above to employees in conjunction with employee relations or wellness activities.

As to the sixth question, the State Ethics Commission knows of no reason why the City could not seek dental and/or eye care services for city employees at discounted rates.

As to the last question, the State Ethics Commission advised in Advisory Opinion SEC AO92-023 that an employee is not 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 participants. The employee is prohibited from accepting anything of value. The definition of anything of value excepts promotional items of less than ten dollars in value, printed informational or promotional material under ten dollars in value, educational material of a nominal value directly related to the recipient's official responsibilities, and promotional or marketing items offered to the general public on the same terms and conditions without regard to the recipient's status as a public officeholder.

A City employee who is invited to serve as a judge for a civic or school competition may receive a gift in accordance with the provisions of Sections 8-13-705 and 8-13-710.