

SUBJECT: ACTIVITIES OF COLLEGE PERSONNEL**SUMMARY:**

(A) Employees would be prohibited from accepting additional compensation for (1) speaking at college functions, (2) performing musical recitals, (3) speaking at college sponsored conferences, or (4) conducting college-sponsored camps, conferences, or seminars which are conducted in "an official capacity". The Commission does not believe that employees are prohibited from accepting compensation for conducting musical recitals, speaking at conferences, or sponsoring, camps, conferences, or seminars during a period when such employees are not under contract. As to the compensation for teaching a course above and beyond the normal load, the Commission offers no advice as that is a personnel question. (B) Complimentary textbooks should be maintained for use by the college and not maintained for the personal use of the faculty member. (C) A faculty member would not be precluded from accepting royalties for writing and/or publishing a textbook provided the adoption is handled in accordance with Section 8-13-700(B). (D) The Commission does not believe that the mere processing of a purchase requisition entails sufficient input to prohibit post-employment with the vendor who obtained such a purchase order or if from a vendor whose products are on State contract when the employee had no input into the development or administration of such contract. (E) The Commission knows of no reason why a public employee/programmer could not engage in devolving a computer program for another public entity consistent with the off-duty employment guidelines.

QUESTION:

The Director of Personnel of Francis Marion College asks a number of questions:

DISCUSSION:

This opinion is rendered in response to a letter dated March 4, 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.

(1) Can employees, at home agency and requesting agency, be paid dual employment for the following: (a) speaking at college functions during the normal workday (i.e., Award's Day, etc.); (b) performing a musical recital (employee is an instructor of music, during the normal workday, after hours and on weekends, and during the summer when not on contract; (c) speaking at a college sponsored conference, during the normal workday, after hours and on weekends, and during the summer when not under contract; (d) teaching a course above and

beyond the normal load; (e) holding a college sponsored camp, conference, or seminar during normal contracted period or during the summer months.

Section 8-13-715 provides in part as follows:

No person may offer or pay to a public official, public member, or public employee and no public official, public member, or public employee may solicit or receive money in addition to that received by the public official, public member, or public employee in his official capacity for advice or assistance given in the course of his employment as a public official, public member, or public employee.

Further, Section 8-13-715 provides in part as follows:

A public official, public member, or public employee acting in an official capacity may not receive anything of value for speaking before a public or private group.

From the facts as submitted, it appears that such employees would be prohibited from accepting additional compensation for (1) speaking at college functions, (2) performing musical recitals, (3) speaking at college sponsored conferences, or (4) conducting college-sponsored camps, conferences, or seminars which are conducted in "an official capacity". The State Ethics Commission defined speaking engagements by public employees "in an official capacity" as those which (1) arise because of the position held by the employee, (2) involve matters which fall within the responsibility of the agency or employee, and (3) are services the agency would normally provide and for which the employee would be subject to expense reimbursement by the public employee's agency. Official capacity also means those duties that are attached to a public office or employment by the Constitution, statutes, executive order, promulgated rules and regulations, published job description or agency directive.

The State Ethics Commission notes for clarification that "speaking before a public or private group" encompasses not only a traditional breakfast or luncheon speech but also more extended participation as speaker at a workshop, seminar, or training session or as a panel participant.

Nothing in this opinion precludes a public employee from making presentations or speeches and receiving an honorarium on matters outside the employee's official capacity when (1) such are accomplished on the employee's own time, (2) no public materials or equipment are utilized, except as provided in Section 8-13-700(A), and (3) it does not interfere with the needs of the agency.

The Commission does not believe that employees are prohibited from accepting compensation for conducting musical recitals, speaking at conferences, or sponsoring, camps, conferences, or seminars during a period when such employees are not under contract.

As to the compensation for teaching a course above and beyond the normal load, the Commission offers no advice as that is a personnel question.

(2) Can a faculty member accept complimentary textbooks which will assist them and the college in textbook selection? After selection, can the faculty member keep the textbook, give the textbook away, or sell the textbook to a used book company?

In Advisory Opinion SEC AO92-163, the State Ethics Commission advised that Section 8-13-700(A) prohibits the use of a public position for personal financial benefit. The Commission advised that textbooks sent for review not reclaimed by the publishers should be used by schools or other institutions and not for personal use of the committee members. The Commission advises that this policy should be followed to avoid even the appearance of impropriety.

Section 8-13-700(A) 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.

The Commission, therefore, advises that such complimentary textbooks are sent to influence the faculty member to adopt such textbook in the classroom. 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.

The Commission advises that such textbooks be maintained for use by the college and not

maintained for the personal use of the faculty member.

(3) Can a faculty member write and have published a textbook, receive royalties from the sale of the textbook, and use the textbook in his/her class?

In Advisory Opinion SEC AO92-127, the Commission called attention to the provisions of Section 8-13-700(B) which provides in part as follows:

(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;

The Commission advises that a faculty member should follow the provisions of Section 8-13-700(B) on matters requiring action or decision affecting the adoption of such textbook which he/she has written and/or published. Such faculty member would not be precluded from accepting royalties for such textbooks provided the adoption is handled in accordance with Section 8-13-700(B).

(4) If the Director of Purchasing signs all purchase orders but had no influence in the ultimate decision and the issuance of the purchase order, after leaving State employment can he/she accept a job with a firm in which the college has conducted business or has a business relationship? Also, if the vendor is on State contract.

The Commission calls attention to the provisions of Section 8-13-760 which provides:

Except as is permitted by regulations of the State Ethics Commission, it is a breach of ethical standards for a public official, public member, or public employee who is participating directly in procurement, as defined in Section 11-35-310(22), to resign and accept employment with a person contracting with the governmental body if the contract falls or would fall under the public official's, public member's, or public employee's official

responsibilities.

This prohibition includes employment from a contractor whose contracts the employee had responsibility for letting or supervising. The Commission has previously advised that when such employee has not been involved with the affected contractor for a period of one year that such employment would not be prohibited.

Section 11-35-310(22) provides as follows:

"Procurement" means buying, purchasing, renting, leasing or otherwise acquiring any supplies, services or construction. It also includes all functions that pertain to the obtaining of any supply, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

The Commission does not believe that the mere processing of a purchase requisition entails sufficient input to prohibit post-employment with the vendor who obtained such a purchase order. The Commission does not believe that such employment is prohibited if from a vendor whose products are on State contract when the employee had no input into the development or administration of such contract.

(5) Can a college computer programmer program on the side for another public entity for pay?

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.

The Commission knows of no reason why a public employee/programmer could not engage in developing a computer program for another public entity consistent with these guidelines.