

SUBJECT: BOOK DISTRIBUTOR PAYING TRAVEL EXPENSES FOR LIBRARIANS AND SCHOOL PERSONNEL

SUMMARY: Travel expenses for librarians to travel to a book distribution warehouse may be reimbursed to the employee's agency by the vendor. A larger discount may be provided to the agency without violating the Ethics Reform Act.

QUESTION: The President of Mumford Library Books, Southeast, Inc. requests an opinion concerning that company's service of providing travel expenses for personnel of school systems, public libraries, and public colleges to travel to Jacksonville, FL to personally select books for their libraries. By viewing books at the warehouse, library personnel can determine whether specific books meet their criteria. The President suggests that travel checks be written directly to the school board, public library, or college rather than the individual employee. He also states that the company has an arrangement with a local hotel which invoices the company directly for any librarians who visit the warehouse.

DISCUSSION:

This opinion is rendered in response to a letter dated April 10, 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 against travel expenses being paid by vendors or potential vendors unless such inspection trips are specified in RFP documents.

The Commission calls attention to Section 8-13-705(A) and (B) 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.

In Advisory Opinions SEC 89-011, and SEC AO92-046 the State Ethics Commission advised against the receipt of travel expenses from a potential vendor unless the inspection trip is specifically included in the RFP documents. Based upon the specifications being included in the RFP, it appears that all potential vendors would be required to provide travel costs associated with the inspection visit to the demonstration location. Since there does not appear to be any undue influence which could be generated through a requirement for all potential vendors to provide the travel costs involved, the State Ethics Commission advised that travel, meals, and accommodations be in accordance with the State travel policies and regulations. Since this is a sole source process, the employee may be reimbursed by the employing agency.

Based upon the facts as submitted, it does not appear that the purchase of such books is accomplished through a RFP since purchases are made directly while at the warehouse. The Commission has advised against such one-party payment of travel expenses, particularly in a sole source-type procurement such as conducted here. The Commission, therefore, advises against direct payment to the individuals of travel expenses for personnel to visit the warehouse. In a personal discussion with a representative of the company, it was suggested by that representative that the company could extend an additional percentage discount to the public entity on purchased books. The Commission believes that such discount achieves a cost-saving to the agency without jeopardizing the ethical integrity of the library personnel in accepting a thing of value from a vendor.