

SUBJECT: AWARDS TO OUTSTANDING HIGHWAY DEPARTMENT EMPLOYEES

SUMMARY:

Outstanding employees of the Highway Department are not prohibited by ethical rules from attending a luncheon sponsored by several donors. Cash awards may be accepted since they are not given to influence official actions. The Secretary of State's Office should be contacted concerning the relationship with a lobbyist or lobbyist principal.

QUESTION:

The Executive Director of the Department of Highways and Public Transportation advises that the Division of Motor Vehicles annually recognizes outstanding employees at a luncheon. Each district nominates two employees, one from Management personnel, one from Office personnel. An impartial committee selects the most outstanding in each category. The agency was unable to underwrite the cost of the luncheon, consequently, five hosts sponsored the luncheon. They were the Carolina Independent Automobile Dealers Association, Association of Automobile Insurance Agents, Automobile and Truck dealers Association, Claims Association, and Trucking Association. He questions clarification as to whether these groups could underwrite the luncheon. In addition, he questions whether the outstanding employees may receive cash awards for their recognition.

DISCUSSION:

This opinion is rendered in response to a letter dated May 20, 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.

Section 8-13-705 prohibits the solicitation or receipt of anything of value by a public official, public member or public employee in return for being influenced. 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 does not believe that the provision of a luncheon to employees of the Department of Highways and Public Transportation is an ipso facto violation of Section 8-13-705. In Advisory Opinion SEC AO92-172, the Commission expressed the need for the establishment of guidelines for solicitation and donation so as to minimize the possibility of undue influence.

In light of the fact that some firms which are asked to help provide funds or goods to the Department may be doing business or be seeking to do business with the agency, the Commission suggests the following guidelines for any such solicitation:

- (1) Solicitation be done either by a separate foundation and/or by employees who are not directly involved in agency activities regarding such businesses which are being solicited.
- (2) All interested potential sponsors be given the opportunity to contribute.
- (3) The contribution be made to a separate fund or account, with no industry source supporting any particular activity or event
- (4) Such industry source may be identified as a conference supporter or sponsor on conference programs, billboards, etc. with no amounts being shown to participants.

Awards to public employees are not outright prohibited by the Ethics Reform Act. However, the Commission calls attention to the provisions of Section 8-13-720 which provides:

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.

It does not appear that the awards, including the cash awards are given to influence the finalists in their official activities. The donor(s) has no control over who will be the eventual recipients since that is handled through a selection committee. Also, although the award is cash in nature, it is not given as a reward for any specific advice or assistance rendered in the course of the employees' position responsibilities. Based upon the finding that there is no potential for influencing the employee in providing the awards and that there is a selection committee which makes the determination concerning the recipients, there does not appear to be a conflict with the program.

The State Ethics Commission advises, however, that the Ethics Reform Act contains further restrictions concerning relationships by State employees with lobbyists and lobbyist principals. The State Ethics Commission, therefore, advises that the Secretary of State's Office be contacted concerning the applicability of the lobbying statute with this awards program.