

SUBJECT: STATE EMPLOYEE ATTENDANCE AT VENDOR-SPONSORED SHOWS

SUMMARY:

Public employees would not be prohibited from accepting a meal or coffee break from vendors at vendor-sponsored shows or seminars, so long as they are provided to all program participants. Public employees may accept educational and promotional items of a value not exceeding ten dollars. Vendors may not pay a public employee's travel expenses unless such trip is specified in an RFP, and such expenses are in accordance with state travel policies and regulations. Vendors may assist with sponsorship of a meeting by contributing to a general conference support fund without supporting any particular event.

QUESTION:

The President of the South Carolina Publishers Association asks several questions concerning whether a public employee may accept meals, coffee breaks and promotional items from vendors at vendor-sponsored shows and seminars. In addition, the Association President inquires whether vendors may pay a public employee's travel expenses to a meeting sponsored by the vendor. Finally, the president seeks review of vendor support of a meeting. The South Carolina Publishers Association is comprised of a number of publishing companies that sell educational materials to the State's public schools.

DISCUSSION:

This opinion is rendered in response to a letter dated July 16, 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. May a publisher host a wine and cheese or coffee and doughnut social and invite teachers of a particular subject area? The publishing company would promote its product at this social. May a publisher sponsor a reception at a statewide meeting of educators or a professional organization? May a publisher offer meals or reception for a particular segment of an organization?**

Section 8-13-710(B) provides:

(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.

Section 8-13-705(b) provides:

(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 Opinion SEC AO92-032, the State Ethics Commission advised:

Acceptance of anything of value from a regulated association is not a per se violation of the Ethics Reform Act. In accordance with Section 8-13-710(B), the acceptance of anything of value given by a person whose activities are regulated by the recipient's agency is to be reported on the Statement of Economic Interests if it exceeds \$25 per day or \$200 in a calendar year. Whether acceptance of such thing of value is a violation of Section 8-13-705 would depend on the circumstances of such offer or receipt of the thing of value.

The provision of a coffee break or meal by a vendor to participants at a show or seminar would not violate the provisions of the Ethics Reform Act unless given to influence the recipient.

**2. Can we give away items to teachers at an exhibit or professional meeting or to a local school district textbook adoption committee?**

Notwithstanding these prohibitions against accepting anything of value, Section 8-13-100(1)(b) excludes from the definition of "anything of value":

- (i) printed informational or promotional material, not to exceed ten dollars in

monetary value;

(ii) items of nominal value, not to exceed ten dollars, containing or displaying promotional material;

\* \* \*

(vi) promotional or marketing items offered to the general public on the same terms and conditions without regard to status as a public official or public employee [.]

Accordingly, the Ethics Reform Act does not appear to prohibit the distribution of educational and promotional items of nominal value to public employees.

**3. Can teachers or educators have their expenses paid or transportation provided to a meeting sponsored by a publisher?**

With respect to vendors paying a public employee's travel expenses to attend a vendor sponsored meeting, in Advisory Opinion SEC AO92-046, the State Ethics Commission advised that such travel expenses may be paid by vendors or potential vendors only when the trip is specified in RFP documents and the expenses are in accordance with state travel policies and regulations.

**4. Can a publisher pay the expenses for a person not employed by that company to serve as a speaker at a school district or state meeting?**

The State Ethics Commission knows of no reason why a publisher could not pay for a person who is not a public official, public member, or public employee to speak at a school district or state meeting.

**5. Can the fee to exhibit materials at a meeting sponsored by a state organization be more than what the hotel or exhibit hall charges the organization sponsoring the event? If all exhibitors at a meeting are asked to share in the cost of a luncheon for its members and only three exhibitors out of ten at the meeting participate, can these three receive recognition for sponsoring the event or will all ten get recognition?**

In Advisory Opinion SEC AO92-172, the Commission advised that, in regard to the solicitation or receipt of anything of value by a public official, public member or public employee, as noted above, such solicitations are prohibited by Section 8-13-705 when they are done in return for being influenced in the discharge or performance of one's official responsibilities. Based on the facts submitted, the Commission does not believe that solicitations described are ipso facto violations of Section 8-13-705.

In light of the fact that those firms who are asked to help defray the costs of an event may be doing business or be seeking to do business with the public entity involved, the Commission suggested 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.

The Commission, therefore, advised in accordance with the above guidelines that vendors not sponsor any particular event, but contribute to a separate conference account. The payment by vendors for booth space would be deposited into this same conference support account for general conference support.

The Commission would further advise that only those vendors who actually contribute should be identified.