

SUBJECT: RECEIPT OF WITNESS FEE

SUMMARY:

An officer in the Sheriff's Department would not be prohibited from accepting a witness fee for testimony in a case made while he was employed as a Highway Patrol Trooper.

QUESTION:

The Cherokee County Sheriff questions whether a member of his Department may accept a witness fee. The officer is a former Highway Patrol Trooper. While employed with the Highway Patrol, this officer had a case which is just now being presented in court. He has been summoned to appear as a witness in that trial. The attorney in the case has subpoenaed this officer and sent him a check for \$30 to cover his expenses.

DISCUSSION:

This opinion is rendered in response to a letter dated June 8, 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 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.
- (C) A person may not, directly or indirectly, give, offer, or promise to give anything of value

to another person with intent to influence testimony under oath or affirmation in a trial or other proceeding before:

- (1) a court;
- (2) a committee of either house or both houses of the General Assembly; or
- (3) an agency, commission, or officer authorized to hear evidence or take testimony or with intent to influence a witness to fail to appear.

(D) A person may not, directly or indirectly, ask, demand, exact, solicit, seek, accept, assign, receive, or agree to receive anything of value in return for influencing testimony under oath or affirmation in a trial or other proceeding before:

- (1) a court;
- (2) a committee of either house or both houses of the General Assembly; or
- (3) an agency, commission, or officer authorized to hear evidence or take testimony, or with intent to influence a witness to fail to appear.

(E) Subsections (c) and (d) of this section do not prohibit the payment or receipt of witness fees provided by law or the payment by the party on whose behalf a witness is called and receipt by a witness of the reasonable costs of travel and subsistence at trial, hearing, or proceeding, or, in the case of an expert witness, of the reasonable fee for time spent in the preparation of the opinion and in appearing or testifying.

Section 8-13-705 prohibits the offer or acceptance of anything of value to influence the performance of official actions or testimony. However, Section 8-13-705(E) provides for the receipt of witness fees from the party on whose behalf the person is called.

The Commission also calls attention to 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.

Since the case does not involve the officer's present position responsibilities, it does not appear that the acceptance of the witness fee would violate either Section 8-13-720 or 8-13-705.