

SUBJECT: APPLICABILITY OF ETHICS REFORM ACT TO VOLUNTEER FIREMEN

SUMMARY:

The Ethics Reform Act's rules of conduct provisions would not generally apply to volunteer firemen serving on the Leesville Volunteer Fire Department.

QUESTION:

A Leesville Town Councilman requests an advisory opinion concerning the Leesville Volunteer Fire Department's recent purchase of Christmas gifts for their annual Christmas party. The Leesville Volunteer Fire Department consists of twenty-five all volunteer members. Nevertheless, the Town of Leesville pays the firemen three dollars for each call they respond to and for each meeting they attend. The Department's governing body, the Executive Committee, consists of the Fire Chief, the Assistant Chief and the Secretary-Treasurer; each of whom is elected by the Department members for a two year term and approved by the Town Council. The Town Council also has the authority to remove a Fire Department officer for cause.

Every year, the Fire Department purchases small gifts to be distributed to those ladies attending the Christmas party. A planning committee, which included the Secretary-Treasurer, was recently formed and placed in charge of organizing this year's party. Among the arrangements to be made by the planning committee, was the purchase of the ladies' gifts. After some discussion among the committee members, including the Secretary-Treasurer, the decision was made to purchase this year's gifts from a local gift shop owned by the Fire Chief and Secretary-Treasurer. The payment voucher for this order was presented for

review at the following Town Council meeting. Recognizing the apparent conflict of interest, the Mayor of Leesville refused to approve the payment voucher until the controversy is resolved.

DISCUSSION:

This opinion is rendered in response to a letter dated August 12, 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.

The State Ethics Commission notes that nearly all of the Ethics Reform Act's rules of conduct provisions apply only to public officials, public members and public employees. Therefore, the threshold question is whether the Act covers volunteer firemen serving with volunteer fire departments.

'Public Employee' according to Section 8-13-100(25) "means a person employed by the State, a county, a municipality, or political subdivision thereof."

'Public Member' is defined in Section 8-13-100(26) as "...an individual appointed to a noncompensated part-time position on a board, commission, or council. A public member does not lose this status by receiving reimbursement of expenses or a per diem payment for services."

'Public Official' is defined in Section 8-13-100(27) as "...an elected or appointed official of the State, a county, a municipality, or a political subdivision thereof, including candidates for the office ..."

A public officer has been defined generally as one who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing, and not occasional or intermittent ...

Sanders v. Belue, 78 S.C. 171, 58 S.E. 762, 763 (1907). Other relevant indicia include whether statutes or other authority establish the position, prescribe its duties, tenure, salary, and bond or require oath or qualifications. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

Thus, based on the facts presented, the Fire Chief and the Secretary-Treasurer of the Leesville Volunteer Fire Department do not appear to be public officials, since the voters of Leesville do not elect them, nor are they appointed to offices of a political subdivision whose duties, tenure or salary are prescribed by statute. Moreover, the Fire Chief and the Secretary-Treasurer do not appear to be public employees, because their service with the Department is strictly voluntary. Although the Ethics Reform Act does not define the terms "employed" or "employment", the Commission believes that these terms connote the provision of services for the State or any political subdivision thereof for which compensation is paid on a regular basis. In addition, their meaning may depend upon the particular facts and circumstances involved. Finally, the Fire Chief and the Secretary-Treasurer are not public members, since the Leesville Volunteer Fire Department does not appear to be a board, commission, or council as required by Section 8-13-100(26). For all these reasons, the State Ethics Commission advises that the Ethics Reform Act's rules of conduct provisions would not generally apply to volunteer firemen serving on the Leesville Volunteer Fire Department. Accordingly, the Ethics Reform Act would not affect the Fire Department purchase in question.