

SUBJECT: FIRE DISTRICT COMMISSIONER PREPARING FIRE DEPARTMENT PAYROLL. PLACEMENT OF MONEY INTO COMMISSIONERS' RETIREMENT ACCOUNTS.

SUMMARY:

A fire district commissioner/treasurer is not prohibited from contracting with the district to prepare the fire department's payroll, as long as he complies with the requirements of Sections 8-13-700 and 8-13-775. Provided the commissioners comply with the requirements of Section 8-13-700(B), the Ethics Reform Act would not appear to prohibit a fire department's decision to deposit money into a retirement fund for the fire district commissioners.

QUESTION:

A fire district commissioner requests a confidential advisory opinion regarding the propriety of two district practices.

DISCUSSION:

This opinion is rendered in response to a letter dated January 5, 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. The fire department in question is a combination volunteer/paid department. The department has seven full time personnel; the volunteers are paid when they fill in for full time firefighters. The newest district commissioner is usually appointed treasurer. Historically, the department has allowed the treasurer to choose between preparing the payroll himself and receiving \$200 per month for the additional responsibility or having an outside organization do the work at a cost comparable to what the treasurer would receive. Is this practice ethical?

The State Ethics Commission calls attention to Section 8-13-700(A), which provides:

(A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use which does not result in additional public expense.

Based on the facts submitted, the district treasurer is given the option of either assuming additional duties for which he would be compensated or allowing an outside organization to perform the needed services. It does not appear that the treasurer has taken any official actions to obtain an economic interest. Therefore, the State Ethics Commission does not believe that the fire district's payroll policy violates Section 8-13-700(A).

The Commission also calls attention to Section 8-13-700(B), which provides in part as follows:

(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated shall:

(1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;

* * *

(5) if he is a public member, he shall furnish a copy to the presiding officer of any agency, commission, board, or of any county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and shall require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause such disqualification and the reasons for it to be noted in the minutes.

Section 8-13-100(11) provides as follows:

(11)(a) Economic interest" means an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.

Accordingly, the Commission advises that the district treasurer may contract to prepare the monthly payroll; however, if the treasurer is required to take action in his official capacity which affects his economic interests pursuant to the contract, he is advised to comply with disclosure and disqualification procedure of Section 8-13-700(B).

The State Ethics Commission also notes Section 8-13-775, which provides:

A public official, public member, or public employee may not have an economic interest in a contract with the State or its political subdivisions if the public official, public member, or public employee is authorized to perform an official function relating to the contract. Official function means writing or preparing the contract specifications, acceptance of bids, award of the contract, or other action on the preparation or award of such contract. This section is not intended to infringe on or prohibit public employment contracts with this State or a political subdivision of this State.

Thus, the treasurer would be prohibited from having an economic interest in a contract with the fire district if he is authorized to perform any official function on the contract through writing or preparing specifications, acceptance of bids, award of the contract, or other action on the preparation or award of such contract, regardless of whether he followed the provisions of Section 8-13-700(B).

In the instant situation, however, it does not appear that the treasurer was authorized to perform any such official function since this appears to be an established agency policy. Absent that official function authority, the treasurer is not prohibited from contracting to prepare the monthly payroll, provided he complies with the requirements of Section 8-13-700(B).

2. The fire district commissioners are voted into the department as active members. They are carried on the membership role of the department and receive the same benefits as all other members. One of these benefits is to have a percentage of monies received from the State Insurance Fund placed into a retirement fund under the member's name. All members of the department, except the commissioners, vote as how the money is spent.

According to the facts submitted, the commissioners did not participate in the department's decision to make contributions to the retirement accounts. Therefore, provided the commissioners comply with the requirements of Section 8-13-700(B), the Ethics Reform Act would not appear to prohibit placing money into a retirement fund for the fire district commissioners.