

SUBJECT: PUBLIC OFFICIAL'S USE OF PERSONALLY OWNED RESIDENCE WHILE ATTENDING CONVENTION

SUMMARY:

A county councilman is advised against charging the county for staying in a personally owned residence while attending a nearby conference.

QUESTION:

A county councilman inquires whether he can stay in a personally owned residence while attending a convention and then bill the county for the single occupancy rate of the hotel where the convention is being held. The councilman states that the rental rate for the house exceeds the cost of lodging at the conference site.

DISCUSSION:

This opinion is rendered in response to a letter dated May 19, 1994 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 8-13-700 provides in part as follows:

(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.

In pertinent part, Section 8-13-100(11) defines the term "economic interest" as follows:

(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 . . . may gain an economic benefit of fifty dollars or more.

According to the facts presented, no additional public expense would result from paying the councilman to stay in his own house. Nevertheless, since the councilman would not attend the conference in question but for his membership on county council, the receipt of this income appears inextricably linked to the councilman's public office. For this reason, the State Ethics Commission advises the councilman not to charge the county for staying in his own house while attending the convention. This conclusion is consistent not only with the prohibition in Section 8-13-700(A) against using one's official office to obtain an economic interest, but also with the intent of the legislature as expressed in the preamble to the Ethics Reform Act that, "[o]fficials should . . . remove themselves from a decision . . . or process that **even appears to be a conflict of interest.**" (Emphasis added.)