

SUBJECT: SCHOOL AT RISK COORDINATOR CONDUCTING WORKSHOPS

SUMMARY: A school At Risk Coordinator would not be prohibited from conducting motivational workshops which are not conducted in her official capacity consistent with the off-duty employment guidelines.

QUESTION: An At Risk Coordinator questions whether she may conduct motivational workshops for secondary school counselors, other than those in her own school district, on innovative and creative ways of implementing "Tech Prep" as a part of their career education programs.

DISCUSSION:

This opinion is rendered in response to a letter dated April 9, 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 8-13-700(A) 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 prior advisory opinions, the State Ethics Commission has advised that a public employee may engage in outside employment consistent with established guidelines: (1) that no public materials or equipment are utilized, except as provided by Section 8-13-700(A), (2) such work is engaged in on the employee's own time, (3) the work does not interfere with the needs of the agency, and (4) the public position is not utilized to obtain or continue the employment.

Section 8-13-715 provides:

A public official, public member, or public employee acting in an official capacity may not receive anything of value for speaking before a public or private group...

The Commission notes that the definition of "anything of value" includes an "honorarium or compensation for services". See Section 8-13-100(1)(a)(xii). The Commission notes that "official capacity" is not defined in the Ethics Reform Act. For purposes of this Act, the Commission defines speaking engagements by public employees "in an official capacity" as those which (1) arise because of the position held by the employee, (2) involve matters which fall within the responsibility of the agency or employee, and (3) are services the agency would normally provide and for which the employee would be subject to expense reimbursement by the public employee's agency. Official capacity also means those duties that are attached to a public office or employment by the Constitution, statutes, executive order, promulgated rules and regulations, published job description or agency directive.

The State Ethics Commission notes for clarification that "speaking before a public or private group" encompasses not only a traditional breakfast or luncheon speech but also more extended participation as speaker at a workshop, seminar, or training session or as a panel participant.

Nothing in this opinion precludes a public employee from making presentations or speeches and receiving an honorarium on matters outside the employee's official capacity in accordance with the off-duty employment guidelines.