

**SUBJECT:** ATTORNEY GENERAL RECEIVING CAMPAIGN CONTRIBUTIONS FROM LAWYERS

**SUMMARY:** The Attorney General is not prohibited from accepting contributions from lawyers in general. Section 8-13-1342 does not prohibit lawyers or employees of law firms who participate in the Associate Counsel program from contributing to the Attorney General.

**QUESTION:** The Attorney General has requested the State Ethics Commission to determine whether its conclusion in Advisory Opinion SEC 91-063 remains unchanged and in compliance with the new ethics statute.

**DISCUSSION:**

This opinion is rendered in response to a letter dated November 8, 1991 requesting an opinion from the State Ethics Commission. The Commission's jurisdiction is limited to the applicability of the State Ethics Act (Act No. 248 of 1991; Section 8-13-100 et. seq., 1976 Code of Laws). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation.

Under the Ethics, Government Accountability, and Campaign Reform Act of 1991, many provisions dealing with this question have remained virtually unchanged from the State Ethics Act (Act No. 191 of 1975). Section 8-13-705 prohibits the offer or acceptance of anything of value to influence an official action. Section 8-13-705 provides:

- (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.

Section 8-13-705(G) provides:

(G) This section does not apply to political contributions unless the contributions are conditioned upon the performance of specific actions of the person accepting the contributions nor does it prohibit a parent, grandparent, or other close relative from making a gift to a child, grandchild, or other close relative for love and affection except as otherwise provided.

Thus, campaign contributions are not prohibited unless they are conditioned upon the performance of specific actions by the person accepting such contribution. The State Ethics Commission previously recognized in Advisory Opinion 91-063 that participation in the Associate Counsel Program is not conditioned on campaign contributions.

The Ethics Act of 1991 does, however, provide in Section 8-13-1342 that:

No person who has been awarded a contract with the State, a county, a municipality, or a political subdivision thereof, other than contracts awarded through competitive bidding practices, may make a contribution after the awarding of the contract or invest in a financial venture in which a public official has an interest if that official was in a position to act on the contract's award. No public official or public employee may solicit campaign contributions or investments in exchange for the prior award of a contract or the promise of a contract with the State, a county, a municipality, or a political subdivision thereof.

The Attorney general has informed the State Ethics Commission that he does not intend to seek campaign contributions from firms that participate in the Associate Counsel Program but he requests the Commission's advice on receiving contributions from lawyers and employees of firms that participate in the program.

Section 8-13-1342 prohibits contributions by a "person who has been awarded a contract". Section 8-13-1300(25) provides that the term "person" includes partnerships and corporations. Under the Associate Counsel Program, contracts to provide legal services are made with law firms not with individual lawyers. Fees for services rendered are paid to the firms rather than individual lawyers. The Commission does not believe that the General Assembly intended to restrict campaign contributions to the extent that employees of companies that contract with the State would be prohibited from making a campaign contribution. Accordingly, the Attorney General's campaign may accept campaign contributions from lawyers and employees of firms that receive contracts to provide legal services under the Attorney General's Associate Counsel Program.