

SUBJECT: PRT EMPLOYEES AND OFFICIALS RECEIVING SUPPORT FROM PRIVATE SECTOR

SUMMARY:

(1) Private industry may provide accommodation support of familiarization trips and site visits to assist PRT in carrying out its mandated responsibilities. (2) Regional tourism commissions and accommodations tax advisory committees are covered by the Ethics Reform Act. (3) PRT division directors are not required to file a Statement of Economic Interests. (4) The annual Conference on Tourism may pay travel expenses for commissioners or staff to attend the conference. (5) PRT Foundation may pay registration fees for invited public officials to attend the Conference on Tourism unless the sponsors are considered a lobbyist principal.

QUESTION:

The Executive Director of Parks, Recreation, & Tourism has raised a number of questions concerning the Ethics Reform Act.

(1) The private sector contributes to the agency's marketing efforts by providing travel expenditures used for writers, travel agents, tour operators, and similar professionals for familiarization tours. PRT organizes and provides staff escorts for the trips. He questions whether PRT can continue to ask for and accept private industry support for these trips.

(2) PRT staff keeps abreast of the state's tourism by periodic visits to and inspections of attractions, destination areas, convention and meeting facilities, etc. The staff visits these facilities with the private sector supporting these training trips. He questions whether they may continue to receive private sector sponsorship of these staff training trips.

(3) PRT staff receive invitations to visit a facility or attraction or participate in an event related to the employee's job or the agency mission. May the employee accept the invitations on his own behalf and/or his spouse, guest or family?

(4) When is it permissible for employees to accept food on a complimentary basis?

(5) Has clarification regarding Section 2-17-90 been offered as to lobbyist's principals offering prohibitions and whether it applies to all state officials and employees or only to officials or agencies that routinely promulgate regulations?

(6) There are a number of multi-county regional tourism commissions created by legislative act with appointment of commission members with approval of local county delegations. The commissions employ staffs which are not state, municipal

or county employees. Do these commissions come under the provisions of the Ethics Act?

(7) The Accommodations Tax Act calls for the appointment of local advisory committees appointed by their respective municipal and county councils. Their recommendations have no force of law. Do these committees come under the provisions of the Ethics Act?

(8) PRT's organizational structure provides for an Executive Director, Deputy Executive Director, and seven division directors. Under Section 8-13-1110(B)(3), would the agency's seven division directors be required to file a statement of economic interests?

(9) The PRT Foundation, SC Hospitality Association, and SC Chamber of Commerce cosponsor the annual Governor's Conference on Tourism and Travel. The Conference operates off registration fees and sponsor contributions. PRT employees provide the necessary staff support. Can conference proceeds cover registration and rooms for PRT Commissioners and employees? PRT officials and employees are sometimes invited to participate in the conference in their official capacity. Traditionally they have been invited as guests of the conference with PRT issuing the invitation. Can conference proceeds cover their registration and rooms? What about spouses?

(10) Can the PRT Foundation pay the registration fees for invited public officials or their spouses?

DISCUSSION:

This opinion is rendered in response to a letter dated December 20, 1991 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 8-13-705 (B) provides:

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.

Whether acceptance of such travel, meals, and lodging is prohibited by Section 8-13-705 should be determined on a case by case advisory basis, depending upon the donee, the donor, the type and amount involved, and whether there are any matters pertaining to the donor before the agency with which the officeholder or employee is associated. As to questions one, two, three, and four the State Ethics Commission advises that the language of Section 8-13-705 is not meant to preclude PRT from performing its mandated responsibilities. The Commission does not believe that a violation occurs if PRT staff receive reasonable and necessary accommodations and meals while carrying out agency activities. No such authority exists for spousal support or participation.

Question five involves interpretation of the lobbyist provisions of the Ethics Reform Act, therefore, the Commission suggests that the Secretary of State's Office be contacted.

As to the sixth and seventh questions, Section 8-13-100(25) provides:

"Public employee" means a person employed by the State, a county, a municipality, or a political subdivision thereof.

Further, Section 8-13-100(26) provides:

"Public member" means an individual appointed to a noncompensated part-time position on a State board, commission, or council. A public member does not lose this status by receiving reimbursement of expenses or a per diem payment for services.

While political subdivision is not specifically defined in the Act, the Commission notes the provisions of Section 8-13-1110(6) which provides for filing of a Statement of Economic Interests by officials of a "political subdivision including, but not limited to, school districts, libraries, regional planning councils, airport commissions, hospitals, community action agencies, water and sewer districts, and development commissions". Agencies authorized by statute are covered by the Ethics Reform Act. The regional tourism commissions and Accommodations Tax advisory committees are public agencies for the purposes of the Ethics Reform Act.

As to the eighth question, Section 8-13-1110(B)(3) provides:

(B) Each of the following public officials, public members, and public employees must file a statement of economic interests with the appropriate supervisory office, unless otherwise provided:

* * *

(3) the chief administrative official or employee and the deputy or assistant administrative official or employee or director of a division, institution, or facility of any agency or department of state government;

It specifically provides for filing by the chief agency administrator and deputy administrators, by whatever title. The intent is to have those officials or employees who are in the top two administrative levels file. Based upon the facts as submitted, the directors of divisions at PRT are third level administrators, therefore, the seven division directors will not be required to file a Statement of Economic Interests.

As to the ninth question, the Commission would advise that registration and lodging expenses can be paid by the conference for actual and reasonable travel expenses incurred by commissioners or staff. No provision exists for payment of spousal expenses.

As to the final question, the Commission knows of no reason why public officials could not be reimbursed actual and necessary expenses incurred in attendance at a conference unless the sponsor is considered to be a lobbyist principal. The Commission would advise that the Secretary of State's Office be contacted concerning the applicability of that provision. as it relates to reimbursement or payment of expenses of public officials and their spouses.