

SUBJECT: DEPARTMENT OF EDUCATION EMPLOYEE REVIEWING BOOKS

SUMMARY:

An employee of the Department of Education would not be precluded from being paid a fee for reviewing a manuscript in accordance with the off-duty employment guidelines. She is advised to follow the procedures of Section 8-13-700(B) on official matters affecting the adoption of the manuscript as a textbook.

QUESTION:

An employee of the Department of Education with responsibility for Marketing Education Programs questions whether she may review a book for a fee. Work will be completed on her own time with no public materials, equipment, or personnel being utilized. It is not part of her position responsibilities and will not interfere with her assigned responsibilities. No presentations or communications that could be interpreted as promoting the product for profit will be conducted. No confidential information will be utilized and she will abstain from official actions if a conflict presents itself.

DISCUSSION:

This opinion is rendered in response to a letter dated February 13, 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.

The Commission calls attention to the provisions of 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;

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(3) if he is a public employee, he shall furnish a copy of the statement to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he shall take the action prescribed by the State Ethics Commission;

Thus, if the manuscript for which the employee has received compensation for reviewing is considered for selection by the Department, she is advised to follow the provisions of Section 8-13-700(B) on matters requiring her action or decision affecting the adoption of such textbook.