

SEC AO92-163

March 25,
1992

SUBJECT: EDUCATION COMMITTEE MEMBERS FINANCIAL DISCLOSURE BY
DEPARTMENT OF EDUCATION MEMBERS

SUMMARY:

Members of State Department of Education Textbook and Curriculum Advisory Committees, Textbook Evaluating and Rating Committees, and Local Textbook Adoption Committees are covered under the Ethics Reform Act, however, would not be required to file a Statement of Economic Interest based solely on their service on such committee. Sample textbooks not reclaimed by publishers should be used by schools or other institutions and not retained for personal use.

QUESTION:

The General Counsel for the State Department of Education asks the following questions with regard to textbook committees appointed by the State Board of Education.

1. Who is covered by the ethics law in regard to the textbook adoption process (i.e., Textbook and Curriculum Advisory Committee, Textbook Evaluating and Rating Committees, and district-level textbook adoption committees)?
2. Which of the three committees are required to complete disclosure forms?
3. May the Evaluating and Rating Committee members continue to follow Board policy regarding the disposition of textbook and instructional material samples? Or should the samples be donated to another entity such as school libraries?

DISCUSSION:

This opinion is rendered in response to a letter dated March 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.

Public member is defined in Section 8-13-100(26) as:

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

Section 8-13-1110(B)(11) 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:

* * *

(11) a public member who serves on a state board, commission, or council;

Section 8-13-700(A) provides:

(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 response to questions 1 and 2 the State Ethics Commission advises that members of all three textbook committees are "Public Members" and are encompassed by the provisions of the Ethics Reform Act; however, for the purposes of this Act, they are not public members of a "state board, commission, or council". Therefore, they would not be required to file a Statement of Economic Interests based solely on their service on such committees.

In regard to question 3, Section 8-13-700(A) prohibits the use of a public position for personal financial benefit. In accordance with Department of Education Regulation No.: R 43-70, and the Policy for Disposition of Textbook Samples, it appears that the samples not reclaimed by the publishers would be used by schools or other institutions and not for personal use of the committee members. The Commission advises that this policy should be followed to avoid even the appearance of impropriety.