

SUBJECT: ELECTRIC COOPERATIVE ENTERTAINING LOCAL OFFICIALS

SUMMARY: Local officeholders would not be prohibited from receiving Christmas gifts or meals as guests of an electric cooperative.

QUESTION:

The Manager, Marketing and Industrial Development, for Aiken Electric Cooperative questions whether the Coop may continue its activities regarding public officeholders. The Coop works closely with local officials on numerous projects. In 1991, the Coop distributed Christmas presents to city and county officials, provided dinners at the Municipal Association, provided lunches and dinners on various occasions, and honored area firemen along with officials of their respective districts.

DISCUSSION:

This opinion is rendered in response to a letter dated May 4, 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.

In Advisory Opinions SEC AO92-039 and AO92-149, the State Ethics Commission called attention to Section 8-13-710(B) which provides:

(B) A public official, public member, or public employee required to file a statement of economic interests under Section 8-13-1110 who receives, accepts, or takes, directly or indirectly, from a person, anything of value worth twenty-five dollars or more in a day and anything of value worth two hundred dollars or more in the aggregate in a calendar year must report on his statement of economic interests pursuant to Section 8-13-1120 the thing of value from:

- (1) a person, if there is reason to believe the donor would not give the thing of value but for the public official's, public member's, or public employee's office or position;
- (2) a person, or from an officer or director of a person, if the public official, public member, or public employee has reason to believe the person:
 - (a) has or is seeking to obtain contractual or other business or financial relationships with the public official's, public member's, or public employee's governmental entity.
 - (b) conducts operations or activities which are regulated by the public official's, public member's or public employee's governmental entity.

Section 8-13-705(b) provides:

(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.

In Advisory Opinion SEC AO92-032, the State Ethics Commission advised:

Acceptance of anything of value from a regulated association is not a per se violation of the Ethics Reform Act. In accordance with Section 8-13-710(B), the acceptance of anything of value given by a person whose activities are regulated by the recipient's agency is to be reported on the Statement of Economic Interests if it exceeds \$25 per day or \$200 in a calendar year. Whether acceptance of such thing of value is a violation of Section 8-13-705 would depend on the circumstances of such offer or receipt of the thing of value.

Giving a Christmas present of nominal value or providing occasional meals to local officeholders would not violate the provisions of the Ethics Reform Act unless done so to influence the recipient(s).

Whether acceptance of such presents or, meals, lodging is prohibited by Section 8-13-705 should be determined on a case by case 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.

If this conduct involves a lobbyist principal, the Secretary of State's Office should be contacted.