

SUBJECT: TOWN EMPLOYEES MAKING CAMPAIGN CONTRIBUTIONS; TOWN EMPLOYEES ATTENDING MEAL FUNCTION

SUMMARY:

(1) The Ethics Reform Act does not prohibit campaign contributions by Town employees. (2) Town Council Members are not prohibited from accepting meal invitations if not given to influence official actions, however, if the meals are accepted, they must be reported on the member's Statement of Economic Interests. (3) A Town Council Member's business is not prohibited from bidding on the location for a Christmas party sponsored by a nonprofit group since he has no official function regarding such contract. (4) The Town may accept drums/garbage receptacles from private businesses, however, the Town should insure that a variety of businesses be allowed to donate. (5) Town Council Members may participate in decisions relating to the use of Park Foundation funds. However, a Town Council Member who also serves on the Park Foundation Board must follow the procedures of Section 8-13-700(B) if required to take action in his official capacity which affects the Park Foundation's Economic Interests.

QUESTION:

The Town Administrator for Sullivan's Island raises several questions.

DISCUSSION:

This opinion is rendered in response to letters dated June 26, 1992 and August 24, 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.

1. Would it be considered a violation of the Ethics Act for Town employees to make campaign contributions in partisan or non-partisan elections?

The Ethics Reform Act does not prohibit campaign contributions by public employees in either partisan or non-partisan elections. However, Section 8-13-1344(C) provides:

An employer may not provide an advantage or disadvantage to an employee concerning the employee's employment or conditions of employment based on the employee's contribution, promise to contribute, or failure to contribute to a candidate, committee, or political party.

2. Each year the Sullivan's Island Volunteer Fire and Rescue Squad, a nonprofit fire

fighting support group conducts a Christmas party at a local restaurant where a nice meal is served and there is an open bar. The party is paid for from the 1% fund. May Town Council and Town employees and their guests be invited to and attend this event, at no charge?

In Advisory Opinion SEC AO92-103, the State Ethics Commission advised that public officials are not prohibited from accepting a meal invitation, unless the meals are given to influence the council members in their official functions. The meal sponsored by the Rescue Squad must be reported if it is worth \$25 or more in a day or \$200 or more in a calendar year.

3. In reference to the same party mentioned above, may the party be held at a local business which is owned and operated by a Sullivan's Island Town Councilman. Is it necessary for the volunteer group to seek bids on this party? Is it ethical, according to the Act, for the Councilman owning the restaurant to bid?

In Advisory Opinion SEC AO92-010(supplemental), the State Ethics Commission advised that a county councilman is not prohibited from contracting with the county if he is not authorized to perform an official functions regarding such contracts in accordance with Section 8-13-775. Section 8-13-775 provides:

A public official, public member, or public employee may not have an economic interest in a contract with the State or its political subdivisions if the public official, public member, or public employee is authorized to perform an official function relating to the contract. Official function means writing or preparing the contract specifications, acceptance of bids, award of the contract, or other action on the preparation or award of such contract. This section is not intended to infringe on or prohibit public employment contracts with this State or a political subdivision of this State.

The Town Councilman's business is prohibited from contracting with the Town if he is authorized to perform any official function on the contract through writing or preparing specifications, acceptance of bids, award of the contract, or other action on the preparation or award of such contract. From the facts as submitted, it appears that the Rescue Squad makes the determination as to the location of the Christmas party, therefore, the council member would not violate the Ethics Reform Act since he has no official function to perform regarding such contract.

4. May the Town accept the donation of 55 gallon drums, which have commercial insignias on them, for the Town to use as garbage receptacles on the beach?

Corporate support of public agency activities has been reviewed in Advisory Opinions SEC AO92-002, SEC AO92-041, SEC AO92-052, SEC AO92-147, and AO92-204. In those opinions, the Commission advised that private business could support agency activities in carrying out agency mandated responsibilities through provision of equipment and services without charge. From the facts as submitted it does not appear that the holiday party is a mandated agency responsibility.

Things of value are prohibited to be either offered or received if given to influence an official action. The Commission, however, does not believe that the provision of the drums/garbage receptacles is given to influence and, therefore, would not violate the Ethics Reform Act. The Commission, however, suggests that the Town consider donations from a variety of businesses so that one business does not utilize all available potential receptacles for advertising.

5. Sullivan's Island has a Park (501(c)(3)) Foundation established to accept donations for the development of recreation facilities at the Town's park property. The foundation maintains a separate board from the Town Council, but a Council Member usually serves as a member of that Board. May Town Council Members participate in decisions related to the use of foundation funds?

The Commission calls attention to 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;

* * *

(4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of any agency, commission, board, or of any county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes;

Section 8-13-100(3) defines 'Business' as:

'Business' means a corporation, partnership, proprietorship, firm, an

enterprise, a franchise, an association, organization, or a self-employed individual.

Section 8-13-100(4) defines 'Business with which he is associated' as:

'Business' with which he is associated' means a business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

Section 8-13-100(11)(a) defines 'Economic interest' as:

'Economic interest' means an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.

Based on the facts submitted, the State Ethics Commission advises the council member who serves on the Park Foundation Board to comply with the provisions of Section 8-13-700(B) if required to take action in his official capacity which affects the Foundation's economic interests.