

SUBJECT: BUSINESS GIVING PROMOTIONAL ITEMS TO PUBLIC OFFICEHOLDERS

SUMMARY:

An AT&T Communication Technician may distribute promotional and educational items to public officeholders without violating the Ethics Reform Act.

QUESTION:

An AT&T Communication Technician requests an opinion concerning the legality of passing out promotional items at state offices. The technician is responsible for educating contractors, utility companies, municipalities and other government agencies regarding fiber optic cable applications.

DISCUSSION:

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

The State Ethics Commission calls attention to Section 8-13-705 which provides:

(A) A person may not, directly or indirectly, give, offer, or promise anything of value to a public official, public member, or public employee with the intent to:

- (1) influence the discharge of a public official's, public member's, or public employee's official responsibilities;
- (2) influence a public official, public member, or public employee to commit, aid in committing, collude in, or allow fraud on a governmental entity; or
- (3) induce a public official, public member, or public employee to perform or fail to perform an act in violation of the public official's, public member's, or public employee's official responsibilities.

(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.

Notwithstanding these prohibitions against offering or accepting anything of value, Section 8-13-100(1)(b) excludes from the definition of "anything of value":

- (i) printed informational or promotional material, not to exceed ten dollars in monetary value;
- (ii) items of nominal value, not to exceed ten dollars, containing or displaying promotional material;

* * *

- (vi) promotional or marketing items offered to the general public on the same terms and conditions without regard to status as a public official or public employee [.]

Accordingly, the Ethics Reform Act does not appear to prohibit the distribution of educational and promotional items of nominal value to public officeholders.