

SEC AO93-065

February 17, 1993

SUBJECT: APPLICABILITY OF ETHICS REFORM ACT TO VOLUNTEER FIREMEN

SUMMARY:

The Ethics Reform Act's rules of conduct provisions would not generally apply to volunteer firemen serving on the Dillon City Fire Department.

QUESTION:

The Dillon City Manager requests an advisory opinion concerning the following situation. The Dillon City Fire Department consists of twenty-two all volunteer members and three full-time drivers. The volunteer members of the department are paid a rate per fire based on their department rank, and they are covered by municipal workers' compensation as well as other personnel provisions. Traditionally, the twenty-five firemen select the members they would like to serve as the department's officers. Although the City Manager has the legal power of appointment, he has always complied with the department's nominations. Several father and son teams currently serve on the department. Recently, one of these fathers was nominated to be Assistant Chief, and his son was nominated to be Second Lieutenant. The City Manager questions whether the Fire Department is subject to the Ethics Reform Act for its volunteer/part-time employees. If so, is it permissible for a father to have direct supervision over the activities of his son.

DISCUSSION:

This opinion is rendered in response to a letter dated January 21, 1993 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 notes that nearly all of the Ethics Reform Act's rules of conduct provisions apply only to public officials, public members and public employees. Therefore, the threshold question is whether the Act covers volunteer firemen serving with volunteer fire departments.

'Public Employee' according to Section 8-13-100(25) "means a person employed by the State, a county, a municipality, or political subdivision thereof."

'Public Member' is defined in Section 8-13-100(26) as "...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."

'Public Official' is defined in Section 8-13-100(27) as "...an elected or appointed official of the State, a county, a municipality, or a political subdivision thereof, including candidates for the office ..."

A public officer has been defined generally as:

one who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing, and not occasional or intermittent ...

Sanders v. Belue, 78 S.C. 171, 58 S.E. 762, 763 (1907). Other relevant indicia include whether statutes or other authority establish the position, prescribe its duties, tenure, salary, and bond or require oath or qualifications. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

Thus, based on the facts presented, the Assistant Chief and the Second Lieutenant of the Dillon City Fire Department do not appear to be public officials, since the voters of Dillon do not elect them, nor are they appointed to offices of a political subdivision whose duties, tenure or salary are prescribed by statute. Moreover, the Assistant Chief and the Second Lieutenant do not appear to be public employees, because their service with the department is strictly voluntary. Although the Ethics Reform Act does not define the terms "employed" or "employment", the Commission believes that these terms connote the provision of services for the State or any political subdivision thereof for which compensation is paid on a regular basis. In addition, their meaning may depend upon the particular facts and circumstances involved. Finally, the Assistant Chief and the Second Lieutenant are not public members since the Dillon City Fire Department does not appear to be a board, commission, or council as required by Section 8-13-100(26). For all these reasons, the State Ethics Commission advises that the Ethics Reform Act's rules of conduct provisions would not generally apply to volunteer firemen serving on the Dillon City Fire Department. Accordingly, the Ethics Reform Act does not appear to affect the proposed appointments to the Dillon City Fire Department.