

SUBJECT: ECONOMIC DEVELOPMENT EMPLOYEE RECEIVING BENEFITS

SUMMARY: A public employee whose duties involve economic development may not accept anything of value if there are matters requiring action by the employee's office or requiring the employee's advice or recommendations which involve the economic interest of a potential corporate resident.

QUESTION:

The Berkeley County Attorney has requested an opinion concerning a county employee whom the county proposes to utilize to undertake economic development duties with regard to locating and recruiting businesses to the county. The employee's duties will include attending functions and being provided with meals, lodging, and other benefits to facilitate his responsibilities. These benefits may be provided either by the locating industry or possibly by third parties. The County's Attorney advises that the employee will not be in a position to take final action on development matters.

The County Attorney has inquired about the potential of impropriety if the employee accepts anything of value from the businesses being recruited.

DISCUSSION:

This opinion is rendered in response to a letter dated January 11, 1995 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 2-17-5 et seq. and Section 8-12-100 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.

S.C. Code §8-13-705 provides in part:

- (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.

Anything of value is defined in S.C. Code § 8-13-100(1) as:

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- (1)(a) "Anything of value" or "thing of value" means:
- (i) a pecuniary item, including money, a bank bill, or a bank note;
 - (ii) a promissory note, bill of exchange, an order, a draft, warrant, check or bond given for the payment of money;
 - (iii) a contract, agreement, promise, or other obligation for an advance, a conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of money;
 - (iv) a stock, bond, note, or other investment interest in an entity;
 - (v) a receipt given for the payment of money or other property;
 - (vi) a chose-in-action;
 - (vii) a gift, tangible good, chattel, or an interest in a gift, tangible good, or chattel;
 - (viii) a loan or forgiveness of indebtedness;
 - (ix) a work of art, an antique, or a collectible;
 - (x) an automobile or other means of personal transportation;
 - (xi) real property or an interest in real property, including title to realty, a fee simple or partial interest in realty including present, future, contingent, or vested interests in realty, a leasehold interest, or other beneficial interest in realty;
 - (xii) an honorarium or compensation for services;
 - (xiii) a promise or offer of employment;
 - (xiv) any other item that is of pecuniary or compensatory worth to a person.
- (b) "Anything of value" or "thing of value" does not mean:
- (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;
 - (iii) a personalized plaque or trophy with a value that does not exceed one hundred fifty dollars;
 - (iv) educational material of a nominal value directly related to the public official's, public member's, or public employee's official responsibilities;
 - (v) an honorary degree bestowed upon a public official, public member, or public employee by a public or private university or college;
 - (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; or
 - (vii) a campaign contribution properly received and reported under the provisions of this chapter.

Thus, a public employee who accepts anything of value is subject to the restrictions of S.C. Code §8-13-705 (1976, as amended). Whether a particular matter is a violation depends on whether such thing of value is given to influence the employee's actions. The Commission is of the opinion that a request by a locating industry or a third party for some favorable action

by the employee would be a violation of this section.

The Commission also calls attention to S.C. Code § 8-13-710(A) (1976, as amended) which provides:

(A) Unless provided by subsection (B) and in addition to the requirements of Chapter 17 of Title 2, a public official or public employee required to file a statement of economic interests under Section 8-13-1110 who accepts anything of value from a lobbyist's principal must report the value of anything received on his statement of economic interests pursuant to Section 8-13-1120(A)(9).

Thus, anything of value received from a lobbyist principal as defined in S.C. Code § 2-17-10(14) (1976, as amended) is to be reported on the Statement of Economic Interests.

Further, S.C. Code §8-13-710(B) 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.

(c) Nothing in this section requires a public official, public member, or public employee to report a gift from a parent, grandparent, or relative to a child, grandchild, or other immediate family member for love and affection.

This section requires disclosure of anything of value worth \$25 or more in a day or \$200 in the aggregate in a calendar year if the gift is from a person who is giving the thing of value because of the officeholder's position, someone who is a potential contractor, or someone whose activities are regulated by the officeholder's agency.

Those persons required to file a Statement of Economic Interests are required by S.C. Code § 8-13-710(A) to report anything of value received from a lobbyist principal. Anything of value worth more than \$25 in a day or \$200 in a calendar year is to be disclosed if the thing is received from a donor where there is reason to believe the donor would not give it except for the person's public position, or if the donor is either regulated by the recipient's agency or is seeking a business relationship with that

agency.

As can be seen from S.C. Code §8-13-710, the provision of anything of value is not precluded by the statute. Instead, the Act requires those persons who file a Statement of Economic Interests to disclose such things of value on their statement. No such requirement exists for a public employee who is not required to file a Statement of Economic Interests. Consequently, while the acceptance of things of value is not prohibited, unless given to influence the employee's actions, the possibility exists for potential problems.

The State Ethics Commission advises that the employee in question should not accept any thing of value from the locating industry or third party if these matters require action by the employee's office or require his advice or recommendations which involve the economic interests of the locating industry or third party.