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State of South Carolina
State Ethics Commission

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SEC AO92-057 January 27, 1992

SUBJECT: FACULTY MEMBERS RECEIVING PAYMENT FOR SPEECHES

SUMMARY:

Faculty members are prohibited from accepting anything of value other than a meal incidental to giving a speech or presentation given "in an official capacity", where the meal is provided to all other persons participating in the same event. The sponsoring group may reimburse the employee's agency for associated costs and the agency may reimburse the employee in accordance with agency travel reimbursement policies.

QUESTION:

The Associate Vice President of Public Affairs at Clemson University has questioned the payment of expenses of faculty members giving speeches. He specifically questions what factors determine when an employee is "acting in an official capacity". He further indicates that invitations to make presentations by faculty members are based upon their expertise in their discipline rather than because of their status as University employees.

DISCUSSION:

This opinion is rendered in response to a letter dated December 31, 1991 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.

Section 8-13-715 provides in part as follows:

> A public official, public member, or public employee acting in an official capacity may not receive anything of value for speaking before the public or private group. Notwithstanding the limitations of Section 2-17-90, a public official or public member may receive payment or reimbursement for actual expenses incurred for a speaking engagement. The expenses must be reasonable and must be incurred in a reasonable time and manner in which to accomplish the purpose of the engagement. If the expenses are incurred out of state, the public official or public member incurring the expenses must receive prior written approval for the payment or reimbursement.

The Commission notes that the definition of "anything of value" includes an "honorarium or compensation for services". See Section 8-13-100(1)(a)(xii). The Commission does not believe acceptance of a meal received by a public employee, public official, or public member who is participating in an event where the same meal is served to all other persons attending or participating in the same event to be compensation for services. Accordingly, a meal accepted under the above restrictions would not be violative of the Ethics Reform Act.

The Commission notes that "official capacity" is not defined in the Ethics Reform Act. For purposes of this Act, the Commission defines speaking engagements "in an official capacity" as those which (1) arise because of the position held by the employee, (2) involve matters which fall within the responsibility of the agency or employee, and (3) are services the agency would normally provide and for which the employee would be subject to expense reimbursement by the public employee's agency. Official capacity also means those duties that are attached to a public office or employment by the Constitution, statutes, executive order, promulgated rules and regulations, published job description or agency directive.

The State Ethics Commission notes for clarification that "speaking before a public or private group" encompasses not only a traditional breakfast or luncheon speech but also more extended participation as speaker at a workshop, seminar, or training session or as a panel participant.

Nothing in this opinion precludes a public employee from making presentations or speeches and receiving an honorarium on matters outside the employee's official capacity when (1) such are accomplished on the employee's own time, (2) no public materials

or equipment are utilized, (3) it is not a part of the employee's position responsibilities, and (4) it does not interfere with the needs of the agency.

The Commission further advised that the group inviting the public employee could contract with the employee's agency to reimburse the employee's agency for the travel expenses. The employee could then be reimbursed by the agency in accordance with agency travel reimbursement policies and procedures.