

SEC AO92-120

March 25, 1992

SUBJECT: HOSPITALITY/MEALS PROVIDED TO COMMISSION/STAFF MEMBERS

SUMMARY:

Commission members/staff would not be prohibited from participating in meal functions incidental to their official activities unless given to influence their actions. Program evaluation consultants are not required to file a Statement of Economic Interests. Complimentary conference registration may be accepted from a national conference of accrediting agencies since it is a gift to the agency.

QUESTION:

The Commissioner of the SC Commission on Higher Education questions:

1. When a member of the Commission on Higher Education or a member of the staff visits a public college or university in the state on official business, may that person accept the offer of a meal provided by the institution?
2. The Education Improvement Act of 1984 provided for the establishment of a program to foster the development of "Centers of Excellence" in teacher training in public and private colleges in the state. A Commission on Higher Education staff member (with a teacher, a representative from the Governor's Office, and an out-of-state consultant) will serve on a team to review a Center of Excellence at Furman University in mid-February. May the staff member accept the offer of lunch provided by Furman?
3. Title II of the federal Dwight D. Eisenhower Act for the Improvement of Mathematics and Science Education (PL 100-297) provides for allocations to the states to improve the teaching of mathematics and sciences in grades K-12. The Commission on Higher Education administers the program. Review panels consisting of Commission on Higher Education staff, State Department of Education staff, teachers, and out-of-state consultants

will evaluate proposals for grants submitted by the colleges and universities in the state. May lunch be provided for the panel from federal grant administrative funds?

4. The Commission has since 1980 conducted evaluations of existing academic degree programs at the public colleges and universities. Out-of-state consultants are employed as a part of the program evaluation process. Do these consultants need to fill out "Economic Interest" forms? The Commission assures that the consultants do not have educational or employment ties to South Carolina.

5. Commission staff members are encouraged to attend banquets sponsored by the agency as a part of various Cutting Edge activities (e.g., the "Palmetto Fellows Award Banquet," the "Professor of the Year" banquet). Is this practice prohibited under the new legislation?

6. In past years, staff members of the License Division of the Commission on Higher Education have received complimentary registration for national conferences of the major accrediting agencies as enticement for state regulators to attend. License Division staff members usually attend these annual conferences for professional development and experience as well as to keep up with changes in the way these commissions perform their functions as they relate to institutional licensure. May these staff members continue to accept complimentary registration from accrediting agencies?

DISCUSSION:

This opinion is rendered in response to a letter dated February 5, 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.

Section 8-13-705 prohibits both the offer and acceptance of anything of value to influence the actions of a public official, public member, or public employee. Section 8-13-705(A) provides:

(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 Section 8-13-100(1) as:

- (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.

Section 8-13-710(A) 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 Section 2-17-10(14) is to be reported on the Statement of Economic Interests.

Further, Section 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.

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. Thus, as to the first three questions, if the meals are not given to influence an official action the State Ethics Commission advised in Advisory Opinion SEC AO92-061 that, they are not prohibited from accepting the meal invitations but may require disclosure in accordance with Section 8-13-710(B). If the donors are lobbyists principals, the Commissioners/staff members must disclose the receipt of such meals and the value.

As to the fourth question, consultant is defined in Section 8-13-100(8) as:

- "Consultant" means a person, other than a public official, public member, or public employee who contracts with the State, county, municipality, or a political subdivision thereof to:
- (a) evaluate bids for public contracts, or
 - (b) award public contracts.

It does not appear from the facts as submitted that the consultants who do the program evaluations are "consultants" as defined in Section 8-13-100(8), therefore, they are not required to file a

Statement of Economic Interests.

As to the fifth question, the State Ethics Commission knows of no reason why the Higher Education Commission staff members could not attend banquets sponsored by the Commission.

With regard to the sixth question, it does not appear that acceptance of such complimentary registration financially benefits a staff member. The registration is paid by the national accrediting organization which is a savings to the agency and does not affect the employee's economic interests. It is a gift to the agency, rather than to the employee, therefore, the State Ethics Commission does not see that complimentary registration from a national conference of accrediting agencies is prohibited.