

SEC AO92-160

May 27, 1992

SUBJECT: PUBLIC OFFICEHOLDERS/LANDOWNERS PARTICIPATING IN SEEDLING DISTRIBUTION PROGRAM AND LANDOWNER ASSISTANCE PROGRAM

SUMMARY:

Public officeholders are not prohibited from participating in a pine seedling distribution program or landowner assistance program provided such programs are available on the same terms to all participants.

QUESTION:

The President of the SC Forestry Association questions whether public officials or employees may participate in programs provided by certain industrial firms. He further questions participation when the industrial firm providing the program may be a lobbyist principal.

DISCUSSION:

This opinion is rendered in response to a letter dated March 9, 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.

(1) If the industrial firm is not a "lobbyist principal" pursuant to Section 2-17-25 of the Act, and the offer to provide free seedlings is extended by the industrial firm to any landowner who has timber for sale, can the landowner who is a public official or public employee accept the free seedlings?

(2) If the same conditions in (1) exist, can the landowner who is a public employee or public official accept seedlings that are provided on a cost-sharing basis? For example, for every seedling the landowner purchases the industrial firm provides one free seedling. Other landowners are also eligible for the cost sharing program.

The State Ethics Commission calls attention to the provisions of Section 8-13-705 which provides in part as follows:

(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.

Provided that such seedlings are available to all landowners under the same terms, it does not appear that participation in either program would violate the Ethics Reform Act.

Some industrial members have landowner assistance programs whereby the landowner is provided, at no cost to the landowner, free seedlings and technical assistance as incentives for the landowner to reforest his land, maximize his timber growth and sell timber to the industrial firm. The landowner must meet certain eligibility requirements, primarily exceeding a certain minimum acreage of timberland. He questions: (3) Can a landowner who is a public official or public employee participate in the landowner assistance program and receive free seedlings and free technical assistance? (4) If the same conditions exist as in (3), can the landowner who is a public official or public employee receive the landowner assistance program benefits on a cost share basis with the industrial firm?

Provided that such participation is available to all participants under the same terms, it does not appear that participation in the landowner assistance program would violate the Ethics Reform Act.

As to the questions involving the provision of the seedlings and landowner assistance program by industrial firms which are lobbyist principals, the State Ethics Commission advises that the Secretary of State's Office be contacted since that office has jurisdiction over the lobbying provisions of the statute.