

SUBJECT: PUBLIC TRANSPORTATION DIVISION PROVIDING VIP PASSES TO PUBLIC OFFICIALS

SUMMARY:

The State Ethics Commission would advise that public officials weigh the impact on a case by case basis of accepting VIP transportation passes. If accepted, the VIP passes must be reported on the public officials' Statements of Economic Interests in accordance with Section 8-13-710(B)(1).

QUESTION:

The Chief Counsel for the South Carolina Department of Highways and Public Transportation, requests an advisory opinion concerning the Public Transportation Division's (PTD) proposed VIPassenger Program. The VIPassenger Program is one component of a statewide public transportation project which targets the general public, the media, community leaders and elected officials. The promotion project is supported by approved State and Federal funding and has gone through Highway Commission approval and State procurement. As presently conceptualized, the VIPassenger Program consists of the PTD issuing the State's public transportation providers VIP passes for the elected officials in their respective locales. The transportation providers would be responsible for the distribution of the passes along with an information kit on the services in the State and of the local provider. The nontransferable passes would be good through June 30, 1994. Neither the transportation providers nor the users would be charged for these passes. The VIPassenger Program is designed to allow elected officials greater opportunity to experience the State's public transportation services and to become more aware of the benefits, roles, and needs of public transportation. The Public Transportation Division believes that increasing local officials' understanding and sensitivity to not only the services provided, but also to the individuals who rely on these services, will generate greater support at the local level.

DISCUSSION:

This opinion is rendered in response to a letter dated July 14, 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.

The State Ethics Commission calls attention to 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.

In analyzing the facts presented to the State Ethics Commission, the threshold determination to be made is whether the contemplated VIP passes constitute "anything of value" within the meaning of the Ethics Reform Act. Section 8-13-100(1) defines that term in part as follows:

(1)(a) "Anything of value" or "thing of value" means:

(x) an automobile or other means of personal transportation;

(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, given the broad nature of this definition and its rather narrow list of exclusions, it is likely that the Public Transportation VIP passes would constitute "anything of value" within the context of

Section 8-13-705. Before concluding, however, that the offer or acceptance of the passes in question would violate Section 8-13-705, the intent of the donor and recipient must be discerned.

Based strictly on the facts submitted, the expressed intent of the donor is "...to allow elected officials greater opportunity to experience public transportation services provided in the State, and to become more aware of the benefits, roles, and needs of public transportation." Accordingly, it appears that the aim of the VIPassenger Program to increase local officials' overall awareness of public transportation, not to influence their performance or discharge of official responsibilities.

However, it also seems that providing VIP passes - that are good through June 30, 1994 - potentially could bestow a significant economic benefit. Thus, whether acceptance of such passes is prohibited by Section 8-13-705 may only be determined on a case by case basis, depending upon the donee, the donor, and whether there are any matters pertaining to the donor before the agency with which the officeholder is associated.

The State Ethics Commission also calls attention to Section 8-13-710(B) which 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.

According to the facts submitted, the VIP passes are being offered to certain public officials solely because of their office or position. Therefore, the Commission concludes that if an official chooses to accept a VIP pass, he must report its receipt on his statement of economic interests.