

SUBJECT: APPLICATION OF ETHICS REFORM ACT TO SCHOOL DISTRICT EMPLOYEES

SUMMARY:

A state employee should not accept a \$25 gift certificate for making a presentation in his official capacity. Money provided by a school business partner may be used to recognize awards for teacher excellence since they are not being given to influence the recipients' official actions or as a reward for specific advice or assistance rendered in the course of the teachers' position responsibilities.

QUESTION:

The Superintendent of Rock Hill School District Three asks several questions concerning the application of the Ethics Reform Act to school district personnel.

DISCUSSION:

This opinion is rendered in response to a letter dated February 22, 1993 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. Can an organization give a state employee a \$25 gift certificate for making a presentation to that organization? The employee will be asked to make the presentation because of his current job/experiences.

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

A ... public employee acting in an official capacity may not receive anything of value for speaking before a public or private group

The Commission calls attention to the definition of "anything of value" which includes "an honorarium or compensation for services" See Section 8-13-100(1)(a)(xii). The Commission also notes that "official capacity" is not defined in the Ethics Reform Act. In SEC AO92-023, however, the Commission defined speaking engagements by public employees "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.

Based on the facts submitted, a state employee could not accept a \$25 gift certificate for making a presentation in his official capacity. However, a public employee could make presentations or speeches and receive an honorarium on matters outside the employee's official capacity as defined above when (1) such are accomplished on the employee's own time; (2) no public materials or equipment are utilized, except as provided in Section 8-13-700(A); (3) it is not a part of the employee's position responsibilities; and (4) it does not interfere with the needs of the agency.

2. Can money provided by a school business partner be used to recognize teacher excellence for things such as being the school Teacher of the Year and for having perfect attendance? Such might include a gift certificate in the \$20 to \$50 range, lunch treats or T-shirts.

As the Commission stated in SEC AO92-236, "[a]wards to public employees are not outright prohibited by the Ethics Reform Act." According to the information presented, the contemplated awards are being not being given either to influence the recipients' official actions or as a reward for specific advice or assistance rendered in the course of the teachers' position responsibilities. Moreover, it does not appear that the school business partner has any control over who will receive the award. Therefore, the State Ethics Commission advises that money provided by a school business partner may be used to recognize awards for teacher excellence.