

South Carolina State Ethics Commission
5000 Thurmond Mall, Suite 250
Columbia, South Carolina 29201

SEC AO94-014

January 19, 1994

SUBJECT: TEXTBOOK PUBLISHER PROVIDING FREE BOOKS AND TEACHING MATERIALS FOR USE IN CLASSROOM

SUMMARY: A textbook publishing company may furnish books and other teaching materials for trial use in a classroom setting, provided the donation is not intended to influence a public official's, public member's, or public employee's official responsibilities. Rather than serving as actual members of textbook adoption committees, teachers who have used publishers-donated texts should appear before these committees to represent their findings and recommendations. Section 8-13-720 prohibits publishing companies from compensating those teachers who utilize donated texts and related materials for trial use in their classrooms.

QUESTION:

A representative of a school textbook publishing company requests an advisory opinion addressing the ethical implications of furnishing a teacher with free textbooks and instructional materials for "pilot" use in the teacher's classroom.

DISCUSSION:

This opinion is rendered in response to a letter dated December 16, 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. May a school textbook publishing company provide a teacher with free books and teaching materials to be "tried" or "piloted" in the teacher's classroom? The materials may be used a few weeks, several months or perhaps an entire year.

The Commission calls attention to Section 8-13-705(A), which provides 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.

The State Ethics Commission has previously advised that private businesses may provide both financial and material support to assist public agencies in carrying out their mandated responsibilities. In Advisory Opinion 93-036 (November 18, 1992) the Commission determined that a corporation could pay the cost of sending the Berkeley County Disaster Preparedness Director to a hazardous materials training seminar since the receipt of training was actually a benefit to the agency. Similarly, the provision of textbooks and teaching materials in the present situation bestows a benefit to the school or to the school district and does not appear intended to influence official actions. Therefore, the State Ethics Commission finds that a textbook publishing company may supply books and other teaching materials for trial use in a classroom setting, provided the donation is not intended to influence a public official's public member's, or public employee's official responsibilities.

2. If the arrangement described above is permissible, may a teacher whose class tested the donated texts serve on a local and/or state textbook committee where the books and materials are being considered for school, district or state adoption?

In previous opinions, the Commission has advised that the Ethics Reform Act does not address the issue of who may serve on boards and commission. Instead, Section 8-13-700(B) requires that in the event of a conflict of interest, a public official, public member, or public employee must abstain from participating in governmental actions or decisions that affect the economic interests of the person, his immediate family, or any business or individual with whom he is associated. Accordingly, while teachers who utilize publisher-donated texts are not prohibited per se from serving on textbook adoption committees, the State Ethics Commission recommends that instead of serving as actual members, these teachers appear before these committees to present their findings and recommendations.

3. Would compensating the teachers have any effect on the situation?

The Commission calls attention to Section 8-13-720, which provides as follows:

No person may offer or pay to a public official, public member, or public employee and no public official, public member, or public employee may solicit or receive money in addition to that received by the public official, public member, or public employee in his official capacity for advice or assistance given in the course of his employment as a public official, public member, or public employee.

It is clear from the facts presented that the only reason for the publishing company to compensate these teachers is because they tested the company's products in their classrooms. Since the teachers would perform these services in their official capacity and in the course of their public employment, the State Ethics Commission advises that Section 8-13-720 prohibits publishing companies from compensating those teachers who utilize donated texts and related materials for trial use in their classrooms.