

SEC AO96-004

SUBJECT: PUBLIC EMPLOYEE IS NOT PERMITTED TO ACCEPT MONEY IN ADDITION TO THAT RECEIVED IN HER OFFICIAL CAPACITY FOR ADVICE OR ASSISTANCE GIVEN IN THE COURSE OF HER EMPLOYMENT.

SUMMARY:

THE SPARTANBURG CHILDREN'S SHELTER, INC. IS PROHIBITED FROM GIVING \$12,000.00 TO AN EMPLOYEE OF THE DEPARTMENT OF SOCIAL SERVICES IN ADDITION TO THAT RECEIVED BY THE EMPLOYEE IN HER OFFICIAL CAPACITY FOR ADVICE OR ASSISTANCE GIVEN IN THE COURSE OF EMPLOYMENT AS A PUBLIC EMPLOYEE.

QUESTION:

The S.C. Department of Social Services (hereinafter DSS) asks if it is permissible for the Spartanburg Children's Shelter, Inc. to give a DSS Employee money in addition to that received by the employee in her official capacity for the advice or assistance she rendered in the course of her employment. In accordance with S.C. Code §8-13-720 (Supp. 1994), the Department is advised that giving money in addition to the employee's salary for advice or assistance rendered by the employee in her official capacity is prohibited under the Ethics Act.

DISCUSSION:

This opinion is rendered in response to a letter from the Assistant General Counsel to the DSS 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 S.C. Code §§2-17-5 et seq.; 8-13-100 et seq. (Supp. 1994)). This opinion does not supersede any other statutory or regulatory restrictions or procedures that may apply to this situation.

On June 8, 1995, the Commission was notified of a proposal made by the Spartanburg Children's Shelter, Inc. to give \$12,000.00 to Ms. Sylvia Stahley. Ms. Stahley is employed by DSS as Social Services Supervisor II. The Spartanburg Children's Shelter, Inc. is a non-profit corporation whose purpose is to provide, furnish, and maintain a structure and grounds, as landlord, to the South Carolina Department of Social Services and remain responsible for the operation of an emergency temporary shelter and care facility for children who are abused, neglected, abandoned, or otherwise without shelter and care.

The Shelter is governed by a board of Trustees who are appointed from the Spartanburg community along with certain *ex officio* members from the Spartanburg County Department of Social Services and the Spartanburg Medical Auxiliary board.

Counsel for DSS provided various forms of documentation about the foregoing and from the

information provided, the following appears.

On May 8, 1995 a Board of Director's meeting was held by the Spartanburg Children's Shelter and a motion was made, seconded, and passed to "give Sylvia [Stahley] a \$12,000.00 consulting fee for 1994-1995. This fee will be brought up for consideration again next May and possibly making it a monthly amount." Board Of Director's Minutes dated May 8, 1995.

On May 26, 1995, the County Director of DSS advised the Personnel Director that the Board wanted to give the money to Ms. Stahley "for her outstanding service as Director of the Shelter" and asked "what the best way to do this was", e.g., "as a bonus, consulting fee, gift or whatever."

On June 8, 1995 this Commission received a copy of the May 26, 1995 letter and was asked for an informal opinion. On June 9, 1995, the Commission verbally requested additional information about the proposal and on June 16, 1995, the Commission confirmed that upon receipt of the information requested an informal opinion would be issued.

By letter dated June 15 and received June 18, 1995, the Commission was advised of Ms. Stahley's job duties and that "the board's purpose in providing payment to the employee was to acknowledge her outstanding job performance."

On June 23, 1995, the Commission issued an informal /non-binding opinion stating that the staff recommendation was, in effect, that Ms. Stahley could not accept the money. The Ethics Act provides at S.C. CODE §8-13-720 (Supp. 1994) that:

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.

* * *

And at S.C. CODE §8-13-795 (Supp. 1994) the Act provides:

Nothing in Chapter 13 of Title 8 prevents a public official or a member of his immediate family from being awarded an award, a grant, or scholarship, or negatively reflects on a public official because of an award, a grant, or scholarship awarded to the public official or to a member of his immediate family on a competitive, objective basis if the public official has not wilfully contacted any person involved in the selection of the recipient, on behalf of the recipient, before the award.

Public employee means a person employed by the State, a county, a municipality, or a political subdivision thereof. Ms. Stahley is a public employee as that term is used in the Ethics Act.

A public official is an elected or appointed official of the State and public member means an

individual appointed to a noncompensated part-time position on a board, commission, or council. Thus, S.C. CODE §8-13-795 is inapplicable and the dispositive statutory provision is found in 8-13-720.

The present statutory prohibition is substantially identical to its predecessor found at S.C. Code §8-13-430 (repealed eff. Jan. 1, 1992). Thus, prior Ethics Opinions construing §8-13-430 are controlling.

In SEC 79-033 the inquiry was whether a police officer could accept reward money from the U.S. Postal Service for apprehending an offender attempting to rob a post office since his position responsibilities include enforcement of law at all times. The apprehension of an offender attempting to rob a post office appeared to be within the position responsibilities and thus the Commission stated the employee should not accept any reward generated by such an arrest.

In SEC 87-016, the Commission stated that a city fireman could accept a reward for providing information gained through off-duty employment regarding a matter of arson since his position responsibilities did not include the investigation or apprehension of arson matters.

In discussing the issue of Section 8-13-430 the Commission noted that an employee acting in his official capacity would be unable to accept any money beyond his normal compensation for that work. The statute prohibits an employee from advising or assisting the public and then accepting additional funds to supplement his income, in effect being paid twice for an accomplishment of the same work responsibilities. Whether a public employee may accept a reward depends upon the nature of the employee's position responsibilities. If the position responsibilities and the circumstances surrounding the situation included investigation of arson through official actions, then such reward may not be accepted. However, if the position responsibilities do not include investigation and apprehension of arson, then the reward could be accepted.

In SEC 90-005 the Commission stated that state employees could accept a cash award given by retired state employees since the recipients are selected by an impartial committee. There was no appearance of an attempt to influence these outstanding employees in their work or to pay them based on advice or assistance rendered in the course of their employment.

Similarly, the Commission stated in SEC 90-030 that outstanding employees of the Division of Motor Vehicles of the Department of Highways could accept cash awards given by the SC Automobile and Truck Dealers Association if the recipients are selected by an impartial committee. There did not appear to be an attempt to influence the outstanding employees in their work or to pay them based on advice or assistance rendered in the course of their employment.

It does not appear that the Spartanburg Children's Shelter, Inc. proposal to provide money to the employee meets the tests referenced above. There was no impartial selection committee composed of parties not associated with the donor organization making the employee selection on a competitive basis. See SEC AO90-030. And, it seems an inescapable conclusion that the money was given for the advice or assistance the employee rendered in the course of her official

responsibilities. Thus, the Commission must advise that the employee may not accept and the Board may not give money to an employee for the work she performed within her official capacity as a public employee.

Additionally, the Commission is obligated to advise that since the Board has provided the money to the employee, the receipt of additional compensation must be reported to the Budget and Control Board pursuant to the 1995-1996 Appropriations Act. The Appropriations Act requires:

... that employees receiving salary supplements report such information to the Budget and Control Board. ...

Any compensation, excluding travel reimbursements, from an affiliated public charity, foundation, clinical faculty practice plan, or other public source or any supplement from a private source to the salary appropriated for a state employee and fixed by the State must be reported by the employee to the Division of Budget and Analyses of the Budget and Control Board. The report must include the amount, source, and any condition of the supplement. Any change in the amount, source or condition must be reported to the division by the employee.

Thus, the Commission further advises that you should confer with the Division of Budget and Analyses of the Budget and Control Board along with the Division of Human Resource Management regarding this matter.