

SEC AO2002-008

January 16, 2002

SUBJECT: PROPER REPORTING OF GIFTS ON STATEMENT OF ECONOMIC INTERESTS

SUMMARY: Due to the discrepancy between Sections 8-13-710(B) and 8-13-1120(A)(9), those individuals required to file an annual Statement of Economic Interests should adhere to the requirements of Section 8-13-1120(A)(9) and disclose the receipt of any gift received in their official capacity.

QUESTION: Is there a threshold value which must be reached before a public official, public member or public employee must report the receipt of a gift when received in their official capacity?

DISCUSSION: The State Ethics 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 2-17-5 et seq. and Section 8-13-100 et seq., as amended, 1976 Code of Laws of South Carolina). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. Failure to disclose relevant information may void the opinion.

Section 8-13-1120 provides in part as follows:

(A) A statement of economic interests filed pursuant to Section 8-13-1110 must be on forms prescribed by the State Ethics Commission and must contain full and complete information concerning:

(9) the source and a brief description of any gifts, including transportation, lodging, food, or entertainment received during the preceding calendar year from:

- (a) a person, if there is reason to believe the donor would not give the gift, gratuity, or favor but for the official's or employee's office or position; or
- (b) a person, or from an officer or director of a person, if the public official or public employee has reason to believe the person:
 - (i) has or is seeking to obtain contractual or other business or financial relationship with the official's or employee's agency; or
 - (ii) conducts operations or activities which are regulated by the official's or employee's agency if the value of gift is twenty-five dollars or more in a day or if the value totals, in the aggregate, two hundred dollars or more in a calendar year.

Section 8-13-710 provides in part as follows:

(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.

In previous Advisory Opinions the State Ethics Commission has advised filers of Statements of Economic Interests to disclose gifts valued at \$25.00 or more "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," pursuant to Section 8-13-710(B). These opinions failed to note the discrepancy between Section 8-13-710(B) and Section 8-13-1120(A)(9).

Article 11 of the Ethics Reform Act specifically enumerates the disclosure

requirements for Statements of Economic Interests. Section 8-13-1120(A)(9) requires the disclosure of any gift without reference to a dollar value, unless the gift is from a regulated individual, and this section should be the prevailing statute to consider rather than Section 8-13-710(B). In order to comply with both the letter and the spirit of the Ethics Reform Act the State Ethics Commission advises filers of Statements of Economic Interests to disclose receipt of all gifts received as a result of their public office or position.

CONCLUSION:

Accordingly, the State Ethics Commission advises public officials, public members and public employees who file Statements of Economic Interests to disclose any gift received as a result of their public office or position.

KEY WORDS:	Statement of Economic Interests
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ANNOTATIONS:	Section 8-13-710, Section 8-13-1120
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