

State of South Carolina

State Ethics Commission

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SEC AO2024-002

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SUBJECT: Whether a gift card constitutes “money” under Section 8-13-720 of the Ethics Reform Act.

SUMMARY: A general-use gift card offered or given by a person, or solicited or received by a public official, public member, or public employee constitutes “money” under Section 8-13-720 of the Ethics Reform Act. Accordingly, no person may offer a general-use gift card to a public official, public member, or public employee and no public official, public member, or public employee may solicit or receive a general-use gift card in addition to money 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.

APPLICABLE LAW:

Section 8-13-720 provides:

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.

DISCUSSION:

The State Ethics Commission’s (Commission) jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (the “Ethics Reform Act”). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. A substantial deviation in relevant information may void the

opinion.

This opinion is issued in response to the ongoing concern the Commission has regarding possible violations of Section 8-13-720 of the Ethics Reform Act of 1991, by public officials, public members, and public employees (public servants) who are offered gift cards for advice or assistance given in the course of their employment.

“The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). “The goal of statutory construction is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd.” Id. At 91. “A court should not consider a particular clause in a statute as being construed in isolation[,] but should read it in conjunction with the purpose of the whole statute and the policy of the law.” State v. Sweat, 379 S.C. 367, 377, 665 S.E.2d 645, 650–51 (Ct. App. 2008), aff’d as modified, 386 S.C. 339, 688 S.E.2d 569 (2010).

Pursuant to Section 8-13-720, public servants are prohibited from receiving or requesting “money” for advice or assistance given in the course of their government employment. However, the Ethics Reform Act does not define “money.” Thus, the question currently before the Commission is whether a gift card constitutes “money.”

This is a novel question for the Commission. However, in a 2007 informal advisory opinion, Commission staff opined that “money” was limited to cash and, therefore, Section 8-13-720 permitted gift cards. In a prior advisory opinion issued in 1995, Commission staff opined that gift cards were “the substantial equivalent” of money and, therefore, Section 8-13-720 prohibited gift cards. Thus, a conflict exists in previous informal advisory opinions that must now be rectified.

The Commission acknowledges that advancing technology has introduced methods of transferring funds that may not have been originally contemplated by the legislature when it drafted Section 8-13-720. With this in mind, the Commission hereby delineates gift cards into two categories: merchant-specific gift cards, which are permissible under Section 8-13-720; and general-use gift cards, which are prohibited under Section 8-13-720. This delineation is supported by the Code of Financial Regulations, which defines a merchant-specific gift card, in relevant part, as a prepaid card redeemable at a single merchant or affiliated group of merchants.¹ By comparison, a general-use gift card, in relevant part, is redeemable at multiple, unaffiliated merchants, usable at automated teller machines, or carries the brand of a payment network (such as Visa, MasterCard, or Discover).² This delineation is further supported by the South Carolina Uniform Money Services Act, which excludes merchant-specific gift cards from its definition of “money transmission.”³

¹ Electronic Fund Transfer, 12 C.F.R. § 1005.20(a)(2) (2024).

² See Electronic Fund Transfer, 12 C.F.R. § 1005.20(a)(3) (2024).

³ See S.C. Code Ann. § 35-11-100 (2024); see also S.C. Code Ann. § 39-1-55 (1976) (including “gift cards” in its definition of “gift certificates,” which it defines as a certificate issued or sold by a person conducting business that entitles the recipient to goods or services from the person who sold or issued the certificate).

The Commission hereby finds that a general-use gift card is the substantial equivalent of “money” under Section 8-13-720. Accordingly, no person may offer or pay to a public servant and no public servant may solicit or receive a general-use gift card in addition to money received by the public servant in his official capacity for advice or assistance given in the course of his employment as a public servant. However, this prohibition does not extend to merchant-specific gift cards with regard to Section 8-13-720.