

SUBJECT: STATE COMMISSION MEMBERS ASSOCIATED WITH ASSOCIATION OF REALTORS

SUMMARY:

A member of the State Ethics Commission is prohibited by Section 8-13-730 from being an officer of an association PAC regulated by the Commission. The member would not be prohibited from receiving an expense account as a regional vice president of the association or from receiving a meal or other benefits provided to members of the professional organization to which he belongs. A member of the State Housing Authority as well as local elected officials, who are members of the Realtors Association would not be prohibited from receiving a meal or other benefits available to all members of the professional organization.

QUESTION:

A member of the State Ethics Commission has requested an opinion as to how his involvement as an official of the SC Association of Realtors will be affected by the Ethics Reform Act of 1991. Also, the Executive Vice President of the South Carolina Association of Realtors has requested an opinion concerning specific activities of this same member and other association members under the new ethics statute. The association member is also a member of the State Ethics Commission. In 1992, he will serve as a regional vice president of the National Association of Realtors in which capacity he will have an expense account of approximately \$6,000. He is also a trustee with the Association's PAC and votes and makes decisions on contributions to statewide candidates. This member also serves as the Federal Legislative Coordinator. The Vice President questions whether this member can receive a meal or be furnished with other materials for which he has paid dues but not a registration fee. He questions whether the member can register for and participate in the Association's annual legislative day which includes speakers and a legislative reception.

Another member of the Association is a member of the State Housing Authority. Other members are local elected officials. The Vice President questions whether these members can participate in association programs and receive free meals and materials.

DISCUSSION:

This opinion is rendered in response to a letter dated November 19, 1991 requesting an opinion from the State Ethics Commission. The Commission's jurisdiction is limited to the applicability of the State Ethics Act (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.

As to the member of the State Ethics Commission having responsibilities with the Association, the

Commission notes Section 8-13-330 which provides in part as follows:

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(B) No member or employee of the commission may be a candidate, an official in a political party, or a lobbyist. Other than by virtue of membership on or employment with the State Ethics Commission, no member or employee of the commission may be a public official, public member, or public employee.

(C) No member of the commission or its staff may participate in political management or in a political campaign during the member's or employee's term of office or employment. No member of the commission or its staff may make a contribution to a candidate or knowingly attend a fundraiser held for the benefit of a candidate. Violation of this provision subjects the employee to immediate dismissal and the commissioner to removal by the Governor.

It does not appear that the Commission member is prohibited by either section from being a member of an association. Nor does this section prohibit the member from contributing to a political action committee, though Section 8-13-330(C) prohibits a direct contribution to a candidate. The member would be prohibited from making direct contributions to a candidate, but would not be prohibited by this section from contributing to a state PAC.

In light of the regulatory responsibilities of the State Ethics Commission outline below, the Commission counsels its members not to make individual contribution to state political action committees.

The Commission further notes the provisions of Section 8-13-730:

Unless otherwise provided by law, no person may serve as a member of a governmental regulatory agency that regulates any business with which that person is associated.

The State Ethics Commission has regulatory responsibilities regarding political action committees as to their organization, record keeping, reporting, and enforcement actions. Since the State Ethics Commission has this regulatory authority and no specific provision requires a member to be associated with a political action committee, it would appear that this member's involvement as an officer of a PAC would be prohibited by this section. The Commission would not find it to be inappropriate for a public officeholder to be associated with a professional organization and to be involved in its activities. However, in this particular PAC situation, the Commission has regulatory responsibilities which make such involvement as an officer of a regulated PAC to be inappropriate.

In regard to the above-quoted sections, the member would be prohibited from attending a fundraiser for a candidate. Attendance at a legislative reception unrelated to a candidate fundraiser would not be prohibited.

The Commission also notes Section 8-13-710(A) which provides as follows:

(A) Unless provided by subsection (b) and in addition to the requirements of Chapter 17 of Title 2, a public official or public employee required to file a statement of economic interests under Section 8-13-1110 who accepts anything of value from a lobbyist's principal must report the value of anything received on his statement of economic interests pursuant to Section 8-13-1120(a)(9).

Section 8-13-710(B) 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.

Anything of value received from a lobbyist's principal is to be disclosed on the member's Statement of Economic Interests. Thus, the expense account amount, if paid by a lobbyist principal, would be disclosed on the member's Statement of Economic Interests.

The State Ethics Commission knows of no reason why the member could not serve as the Federal Legislative Coordinator.

As to the question regarding receipt of a meal and materials for which the member has paid dues, the Commission would see no prohibition against a member of a professional organization receiving those benefits which accrue to all members of that organization.

As to the member of the State Housing Authority and local elected officials, the above paragraph addresses their involvement in Association activities.