

SUBJECT: WILDLIFE EMPLOYEES AND OFFICIALS RECEIVING FREE PASSES

SUMMARY:

The Wildlife Department would not be prohibited from accepting passes to the Southeastern Wildlife Exposition for use by Department officials or employees since the agency does not regulate Expo and no contracts are pending or anticipated.

QUESTION:

The Deputy Chief Counsel for the Wildlife and Marine Resources Department is questioning whether employees or Commissioners may accept free passes to the Southeastern Wildlife Exposition. The agency has manned two or more educational booths and is entitled to receive a certain number of passes to the various exhibit halls. These passes are distributed to employees who work at those displays. At this year's Exposition, the beneficiary will be the ACE Basin Project. The agency has been working with various public and private groups on the project. Many individuals who have potential to contribute to that project will be attending the Expo. The agency's top representatives need to approach these individuals.

DISCUSSION:

This opinion is rendered in response to a letter dated December 20, 1991 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.

Section 8-13-710(B) provides:

(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.

Anything of value or thing of value is defined in Section 8-13-100(1) as:

- (1)(a) "Anything of value" or "thing of value" means:
- (i) a pecuniary item, including money, a bank bill, or a bank note;
  - (ii) a promissory note, bill or exchange, an order, a draft, warrant, check, or bond given for the payment of money;
  - (iii) a contract, agreement, promise, or other obligation for an advance, a conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of money;
  - (iv) a stock, bond, note, or other investment interest in an entity; (v) a receipt given for the payment of money or other property;
  - (vi) a chose-in-action;
  - (vii) a gift, tangible good, chattel, or an interest in a gift, tangible good, or chattel;
  - (viii) a loan or forgiveness of indebtedness;
  - (ix) a work of art, an antique, or a collectible
  - (x) an automobile or other means of personal transportation;
  - (xi) real property or an interest in real property, including title to realty, a fee simple or partial interest in realty including present, future, contingent, or vested interests in realty, a leasehold interest, or other beneficial interest in realty;
  - (xii) an honorarium or compensation for services;
  - (xiii) a promise or offer of employment;
  - (xiv) any other item that is of pecuniary or compensatory worth to a person.
- (b) "Anything of value" or "thing of value" does not mean:
- (i) printed informational or promotional material, not to exceed ten dollars in monetary value;
  - (ii) items of nominal value, not to exceed ten dollars, containing or displaying promotional material;
  - (iii) a personalized plaque or trophy with a value that does not exceed one hundred fifty dollars;
  - (iv) educational material of a nominal value directly related to the public official's, public member's, or public employee's official responsibilities;
  - (v) an honorary degree bestowed upon a public official, public member, or public employee by a public or private university or college;
  - (vi) promotional or marketing items offered to the general public on the same terms and conditions without regard to status as a public official or public employee; or
  - (vii) a campaign contribution properly received and reported under the provisions of his chapter.

It appears from the facts as submitted that the passes would be given to employees or officials of the

Department due to their relationship with the project. It does not appear that the group providing the passes is seeking a contractual or business or other relationship with the agency, nor does it appear that the group is regulated by the Department. Those officials, members, or employees who are required to file a Statement of Economic Interests must disclose anything of value received which is worth \$25 or more in a day or \$200 in the aggregate in a calendar year from the person providing the passes.

The State Ethics Commission also calls attention to the provisions of Section 8-13-705(B):

- (B) A public official, public member, or public employee may not, directly or indirectly, knowingly ask, demand, exact, solicit, seek, accept, assign, receive, or agree to receive anything of value for himself or for another person in return for being:
- (1) influenced in the discharge of his official responsibilities;
  - (2) influenced to commit, aid in committing, collude in, allow fraud, or make an opportunity for the commission of fraud on a governmental entity; or
  - (3) induced to perform or fail to perform an act in violation of his official responsibilities.

While the passes are being given to the Department for use by certain officials and employees, it does not appear that the receipt is intended to influence any action by the officials or employees. The Commission, therefore, sees no prohibition against the acceptance of such passes by the Department for use by Department officials or employees.