

1975 WL 29108 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 29, 1975

*1 Whether the gift or offer of season football tickets to members of the General Assembly by officials of a state university or college constitutes a violation of the Ethics Act is a factual question that lies within the statutory jurisdiction of the State Ethics Commission.

TO: Presidents of The Citadel
Clemson University, South Carolina
State College and the University of South Carolina

QUESTION PRESENTED:

Would the gift or offer of season football tickets to members of the General Assembly by officials of a state university or college violate the Ethics Act?

STATUTE INVOLVED:

Act No. 191, Acts of 1975 (Ethics Act)

DISCUSSION:

Introduction. The 1975 General Assembly enacted a comprehensive ethics law (Act) for public employees and public officials which was approved by the Governor on May 29, 1975. The rules of conduct prescribed therein took effect on that date.

The Act creates a State Ethics Commission, which is empowered to implement the Act with respect to all public employees and public officials who are not members of the General Assembly. Section 4(g) and (h) of the Act imposes on the Commission the duty to issue advisory opinions on the Act's requirements and to promulgate rules and regulations to carry out its provisions. The Commission also has the duty to investigate alleged violations of the Act, to hold a hearing after a showing of probable cause, and to make a recommendation for further action, where appropriate. The question here raised by officials of state universities would be referred to the Commission, were the Commission now in formal existence.

Statutory Construction. Nowhere in the Act are gifts to members of the General Assembly categorically prohibited. To the contrary, § 26 permits such gifts, subject to the requirement that gifts in excess of \$100 from a lobbyist, as defined in Code § 30-151, or the entity the lobbyist represents, be reported on official disclosure forms.

In contrast to § 26 the Act contains in § 20 a blanket prohibition against the offer or acceptance of 'anything of value', where the offeree is a 'member or employee of a governmental regulatory agency or department that regulates a business with which [the offeror] is associated . . .' This section indicates the legislature intended for the strict prohibition against gifts to apply only to a narrow range of public officials and employees.

Section 13 of the Act provides as follows:

Whoever gives or offers to any public official or public employee any compensation to influence his action, vote, opinion or judgment as a public official or public employee or such public official solicits or accepts such compensation to influence his action, vote, opinion ?? judgment shall be subject to the punishment as provided by Sections 16-211 and 16-212 of the 1962 Code. The provisions of this section shall not apply to political contributions unless such contributions are conditioned upon the performance of specific actions of the person accepting such contributions nor shall they prohibit a parent, grandparent or relative from making a gift to a child, grandchild or other close relative for love and affection except as hereinafter provided.

*2 The language in § 13 which excludes political contributions and gifts to close relatives from the meaning of the section is of uncertain effect. At the least, it suggests that certain other types of gifts are prohibited.

Construing the above referenced three sections together however, it appears that the legislature intended to prohibit gifts to legislators only when the attendant circumstances are such that the gift constitutes ‘compensation to influence (the legislator's) action, vote, opinion or judgment as a public official . . .’

The circumstances surrounding the proposed gift of season tickets to legislators could reasonably sustain an inference that the purpose of the gift is to influence the recipients in the discharge of their official duties as they involve legislative matters affecting the ticket donors. As noted, however, the statute contemplates that this factual determination be made by the Commission, whether by advisory opinion, by rules and regulations or on a case by case basis. The undersigned express no opinion on what determination might eventually be reached by the Commission on this factual question.

CONCLUSION:

Inasmuch as the state Ethics Commission is not yet officially constituted a perational, no guidelines are available as to whether the offer or gift of football season tickets to legislators by officials of a state university or college would constitute a violation of the Ethics Act. While the Act vests the determination in the Commission, the circumstances attendant to the gift here in question could reasonably support an inference that the gift is in violation of § 13.

Edward E. Poliakoff
Staff Attorney

1975 WL 29108 (S.C.A.G.)