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# The State of South Carolina



## Office of the Attorney General

**T. TRAVIS MEDLOCK**  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE: 803-734-3970  
FACSIMILE: 803-253-6283

May 15, 1990

The Honorable Patrick B. Harris  
Chairman, House Legislative Ethics Committee  
Post Office Box 11867  
Columbia, South Carolina 29211

Dear Representative Harris:

In a letter to this Office you indicated that a state representative who is not a candidate for reelection and is not offering for any other elective office has been approached by the State Health and Human Services Finance Commission (HHSFC) regarding his availability to enter into a consulting contract with HHSFC to do work in rural health care systems development and Medicaid eligibility matters. The contract period would fall between adjournment sine die and December 31, 1990, a large portion of which time the representative would still legally be his district's legislator. You asked whether the representative's entering into a consulting arrangement with HHSFC after sine die adjournment would violate this State's Ethics Act.

Based upon a review of the State Ethics Act, Sections 8-13-10, et seq., Code of Laws of South Carolina, 1976, as amended, it appears that there is no absolute prohibition to the proposed arrangement between HHSFC and the representative. However, certain provisions of the Ethics Act must be followed to avoid conflict therewith.

In particular, the state representative must avoid the use of his official position or office to obtain financial gain for himself. This is required by Section 8-13-410, supra. Pursuant to Section 8-13-420

whoever gives or offers to any public official... any compensation including a promise of future employment to influence his action, vote, opinion or judgment as a public official...or such public official solicits or accepts such compensation to influence his action, vote, opinion or judgment shall be subject to punishment... .

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Furthermore, the representative should not solicit or receive any money in addition to that received by him in his official capacity for advice or assistance which should be included in the normal course of the representative's public duties. This means that any action taken privately by the representative must be unrelated to the activities performed by the representative in his official capacity as a state representative. Also, no individual shall offer or provide additional compensation under such circumstances. Such is the requirement of Section 8-13-430, supra. Furthermore, pursuant to the provisions of Section 8-13-440, supra, the representative cannot use or disclose any confidential information gained by him in the course of his official activities in a way that would result in financial gain for himself or for any other person.

If the representative is faced with a situation, in the discharge of his official duties, which would require him to take action or make a decision which would "substantially affect directly" his personal financial interests or those of a business with which he is associated, the representative must comply with the provisions of Section 8-13-460, supra.<sup>1/</sup> In summary, these provisions require the preparation of a written statement describing the matter requiring action, and the nature of the potential conflict of interest with respect to such action. Such statement is to be delivered to the presiding officer of the House, and if the legislator requests, he shall be excused from votes, deliberations, and other actions on the matter on which a potential conflict of interest exists.

Procurement provisions set forth in the Ethics Act should also be considered. Typically a business with which a public official is associated may contract with State governmental agencies provided the public official took no part in the bid award or decision and the contract, when required, was let through a process of public notice and competitive bidding. Section 8-13-410(2) provides

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1/ "Business" is defined as

any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, and self-employed individual. Section 8-13-20(a)

"Business with which he is associated" is defined as

...any business of which the person or a member of his household is a director, officer, owner, employee or holder of stock worth ten thousand dollars or more at fair market value or which constitutes five percent or more of the total outstanding stock of any class and any business which is a client of the person. Section 8-13-20(b)

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(2) No public official or public employee shall participate directly or indirectly in a procurement when he has knowledge or notice that:

(a) he or any business with which he is associated has a financial interest pertaining to the procurement;

(b) any other person, business, or organization with whom he or a member of his household is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

Section 8-13-500(3) provides:

(i)t shall be a breach of ethical standards for a business, in which a public employee or public official has a financial interest, knowingly to act as a principal or as an agent for anyone other than the State or other governmental entity with which he is associated in connection with any contract, claim or controversy, or any judicial proceeding in which the public employee or public official either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of the official's or employee's official responsibility, where the State or governmental entity is a party or has a direct and substantial interest.

Therefore, it is a violation of the State Ethics Act for a business with which a public official is associated to enter into a contract with the State where the public official took action or made decisions concerning the contract in his official capacity. In such situations, Section 8-13-460 would be especially relevant. As to the situation involving the State representative and HHSFC, the representative should disqualify himself from any actions concerning a contract with HHSFC in his official capacity.

If in pursuing the situation described in your letter there are any specific questions about a course of conduct I would be glad to review such with the representative. Additionally, the state representative may wish to consult State Personnel as to the proposed arrangement.

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With best wishes, I am

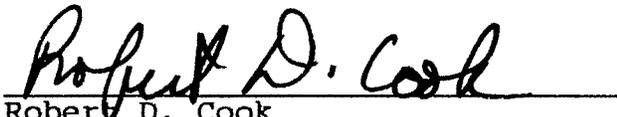
Very truly yours,



Charles H. Richardson  
Assistant Attorney General

CHR/nw

REVIEWED AND APPROVED BY:



Robert D. Cook  
Executive Assistant for Opinions