

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

March 20, 1991

Mark R. Elam, Esquire
Senior Counsel to the Governor
Office of the Governor
Post Office Box 11369
Columbia, South Carolina 29211

Dear Mr. Elam:

By letter dated March 19, 1990 you have asked the opinion of this Office as to whether use of official position or office for financial gain as proscribed in S.C. Code Ann. § 8-13-410(2)(b) would be a crime involving moral turpitude within the purview of Article VI, Section 8 of the Constitution of the State of South Carolina.

Moral turpitude is defined by the South Carolina Supreme Court as:

an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man. ...Moral turpitude implies something immoral in itself, regardless of whether it is punishable by law as a crime. ...

State v. Horton, 271 S.C. 413, 414, 248 S.E.2d 263 (1978); see also State v. Morris, 289 S.C. 294, 345 S.E.2d 477 (1986); State v. Drakeford, 290 S.C. 338, 350 S.E.2d 391 (1986); State v. Yates, 280 S.C. 29, 310 S.E.2d 805 (1982).

The offense charged in the indictment is based upon S.C. Code Ann. § 8-13-410(2)(b) which provides:

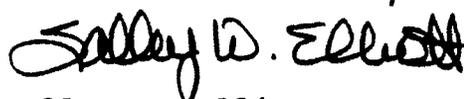
No public official or public employee shall participate directly or indirectly in a procurement when he has knowledge or notice that ...

Mr. Elam
Page 2
March 20, 1991

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.

This Office has previously opined that use by a public official of his position to obtain financial gain for himself as proscribed by S.C. Code Ann. § 8-13-410(1) would involve moral turpitude "... in that it is morally equivalent to theft or embezzlement and exhibits a disregard for the requirement of conduct imposed upon a public officer." S.C. Atty. Gen. Ops. dated February 1, 1980 and March 7, 1980. Based upon this reasoning it is the opinion of this Office that the offense involved in S.C. Code Ann. § 8-13-410(2)(b) would be a crime involving moral turpitude within the purview of Article VI, Section 8 of the Constitution of the State of South Carolina.

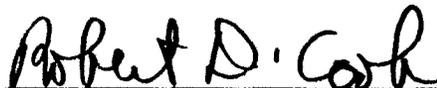
Sincerely,



Salley W. Elliott
Assistant Attorney General

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REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions