

1984 WL 249867 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 25, 1984

*1 The Honorable Margaret H. Rush
Commissioner
State Highways and Public Transportation Commission
Post Office Box 544
Goose Creek, SC 29445

Dear Commissioner Rush:

In a letter to this Office, you referenced a situation whereby a consulting firm known as Carolinas Construction Training Council (CCTC) may be awarded a contract by the South Carolina Department of Highways and Public Transportation under its OJT Supportive Service Program. Based upon the circumstances outlined in your letter, you have questioned whether a conflict of interest would exist if CCTC is awarded the contract. You particularly questioned whether a conflict of interest exists in the situation you described whereby the CCTC, which is composed of contractors who belong to the Carolinas Branch, Associated General Contractors (AGC), would be called upon to monitor the contractors who compose, in your description, the CCTC.

Referencing the situation described in your letter, I am unaware of any provisions of the State Ethica Act, [Sections 8-13-10, et seq., Code of Laws of South Carolina](#), 1976, as amended, which would prohibit the referenced contractual arrangement. The Ethics Act generally is applicable only to public officials and public employees and typically prohibits the utilization of public positions for personal financial gain. However, the situation you described in your letter appears to be more involved with a purported conflict of interest in the private sector, *i.e.*, the CCTC and the contractors who would be monitored by and make up the CCTC are private parties. Therefore, inasmuch as the parties are not within the scope of the provisions of the State Ethics Act, its provisions would be inapplicable to the situation described in your letter.

The situation described by you as a conflict of interest apparently derives from the fact that CCTC acts as both the Supportive Services Consultant and, in some instances, enters separate contracts with general contractors to conduct required training programs for minority trainees. A search of both State law and regulations, including the State Procurement Code, as well as federal regulations and statutes we believe to be applicable, has revealed no authority which would preclude a Supportive Services Consultant from entering such separate contracts to provide required training of recruits. You may wish, however, to contact the Federal Highway Administration or other interested federal agency to ensure that there are no administrative policy statements or memoranda which would bear on this question.

We have also reviewed the supplemental material submitted by you regarding the Association of General Contractors. While the materials seems to indicate strong opposition by the AGC to certain minority business set aside programs, we have found nothing which make the proposed contract in question violative of state law.

We have also reviewed the South Carolina Department of Highways and Public Transportation's Request for Proposal (RFP) and the reporting requirements mentioned in your letter. We note that Section IV of the RFP requires the Supportive Services Consultant to submit monthly reports of meetings with contractors and interviews with trainees concerning such subjects as the reasons for termination of any trainees, any problems encountered by contractors or trainees, any assistance rendered to contractors in the program, and the number of trainees leaving the program and causes therefor. Whether or not the CCTC is so closely aligned in interest with its ABC Member-Contractors as to preclude the submission of objective and meaningful reports under this Section is a policy question to be decided by the Department of Highways and Public Transportation.

Yours very truly,

*2 Joseph A. Wilson, II
Chief Deputy Attorney General

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