



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

February 19, 2004

The Honorable Bill Cotty
Member, House of Representatives
522-A Blatt Building
Columbia, South Carolina 29211

Dear Representative Cotty:

In a letter to this office you indicated that Mr. Donald Spivey, a licensed financial adviser for Morgan Stanley, is interested in running for election to the State House of Representatives. Referencing such, you have raised the following questions:

1. Can Morgan Stanley continue to bid on government bonds (school, state, etc.)?
2. Can Morgan Stanley continue to distribute, sell and manage the sale of such bonds?
3. Can Morgan Stanley continue to receive advisor fees for consulting with and for public entities like city and county government, state agencies, or school boards?

Of course, there is no prohibition upon the individual's running for office. I assume you are raising the questions based upon the assumption that Mr. Spivey would be elected to the House.

Based upon a review of the State Ethics Act, codified at S.C. Code Ann. Sections 8-13-100 et seq. (Supp. 2003), it appears that there would be no absolute prohibitions to the referenced activities involving Morgan Stanley if Mr. Spivey was elected to the House. However, certain provisions of the Ethics Act must be followed to avoid conflicts therewith. Moreover, as you know, the House of Representatives Legislative Ethics Committee is the designated appropriate supervisory office under the Ethics Act for State representatives. See Sections 8-13-510 et seq. As a result, that Committee is charged with supervisory enforcement of the Act and we would defer to its findings on the propriety of the activities of House members. However, to be of assistance, I would refer you to particular provisions of the Ethics Act which may be applicable to the questions raised. I am also enclosing copies of these provisions for Mr. Spivey's complete review.

In particular, Mr. Spivey would have to avoid the use of his official position or office to obtain financial gain for himself or the business with which he was associated. See Section 8-13-700. If Mr. Spivey, as a House member, would be faced with a situation, in the discharge of his official duties, which would require him to take action or make a decision which would

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substantially affect his personal financial interests or those of Morgan Stanley, he would have to comply with the provisions of Section 8-13-700. In sum, 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 that action. The statement would be delivered to the presiding officer of the House, and he then would be excused from votes, deliberations, and other actions on the matter on which a potential conflict of interest exists.

Mr. Spivey should not solicit or receive any compensation in addition to that received by him in his official capacity for purpose of influence or for advice or assistance which would be included in the normal course of the representative's public duties. See Sections 8-13-705 and 8-13-720. Furthermore, pursuant to the provisions of Section 8-13-725, Mr. Spivey could not 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 Morgan Stanley. Pursuant to Section 8-13-775, Mr. Spivey as a House member could not have an economic interest in a contract with the State or its political subdivisions if he was authorized to perform an official function relating to the contract. As set forth by such provision, "(o)fficial function means writing or preparing the contract specifications, acceptance of bids, award of the contract, or other action on the preparation or award of the contract."

As long as Mr. Spivey would comply with the restrictions set forth in the State Ethics Act, it appears that Morgan Stanley could continue to conduct business in the manner suggested by his questions.

If there is anything further, please advise.

Sincerely,

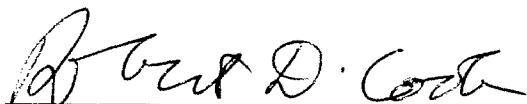


Charles H. Richardson
Senior Assistant Attorney General

Enclosures

cc: Mr. Don Spivey

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General