

# The State of South Carolina



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December 8, 1993

Ms. Katherine Wolfe, President  
Deferred Compensation Commission  
3700 Forest Drive, Suite 101  
Columbia, South Carolina 29204

Dear Ms. Wolfe:

I am in receipt of your request for an opinion as to whether the International City Management Association (ICMA) may legally market its deferred compensation plans in South Carolina. Along with the request you have directed my attention to the law governing the State's Deferred Compensation Program (S.C. Code Ann. §8-23-10 et seq.) as well as an earlier opinion of this Office dated February 13, 1979 which stands for the proposition that State employees may participate only in the deferred compensation plans selected by the Deferred Compensation Commission. Because the State program is concerned only with the employees of the State, its agencies and political subdivisions, this opinion will address only the legality of ICMA selling investments under its deferred compensation plans to employees such as these.

For purposes of this opinion it is assumed that ICMA has all other licenses, permits, and authorizations required by law for it to transact business in South Carolina. This opinion is not meant to and should not be construed as addressing the legality of ICMA selling investments under its deferred compensation plans to those who are self-employed, work for private businesses, the federal government, or other non-state employers.

One further caveat, the term "market" can be interpreted quite broadly. For purposes of this opinion, the inquiry will be directed not at the ability of ICMA to market its plans, but rather

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whether the State, its agencies and political subdivisions may contract for the purchase or procurement of investments offered by ICMA under its deferred compensation plans. The law governing the State Deferred Compensation Program controls the conduct of the State, its agencies and political subdivisions, not ICMA.

S.C. Code Ann. §8-23-10 creates the South Carolina Deferred Compensation Program, the purpose of which is to enable employees of the State, its agencies and political subdivisions to participate in voluntary deferred compensation plans. S.C. Code Ann. §8-23-20 provides that the Deferred Compensation Commission (Commission) with the advice and approval of the State Treasurer shall select plans as the Commission may approve which are not in conflict with the State Constitution. S.C. Code Ann. §8-23-30 also states that the investments purchased under the plan shall be underwritten or offered by persons who are authorized by the Commission. This is consistent with our earlier opinion on this issue.

It should be noted that in addition to the plans approved by the Commission, political subdivisions may also participate in deferred compensation plans offered independently of the Commission, provided they meet the requirements of S.C. Code Ann. §8-23-70. Section 8-23-70 limits the independent deferred compensation plans with which political subdivisions may contract to those offered by building and loan or savings and loan associations, banks, trust companies and credit unions chartered by the state or federal governments, provided that such deferred compensation plans or programs comply with the applicable federal income tax law in providing income deferral, and further provided that all deferred amounts shall be held in accounts, certificates of deposit or other forms of savings vehicles which are insured by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation.

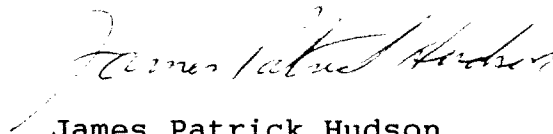
Given the above, it is the opinion of this Office that ICMA may legally provide investments under its deferred compensation plans to employees of the State, its agencies and political subdivisions, provided the Commission has approved the plans and authorized the person underwriting and offering the plans pursuant to §§8-23-20 and 8-23-30. Further, even if the Commission has not approved the plans, ICMA may legally provide them to political subdivisions, provided ICMA and the particular investment meet the requirements of §8-23-70. Because I have no information as to the nature of the ICMA or the investments offered by it, I can offer no

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opinion as to whether they meet the requirements of §8-23-70. It should be noted that plans and investments approved by the Commission need not necessarily meet the requirements of §8-23-70 but are governed by the requirements of §§8-23-20 and 8-23-30.

Ms. Wolfe, this opinion applies to all plans offered by ICMA. Please feel free to contact me if you are in need of additional information on this or any other matter.

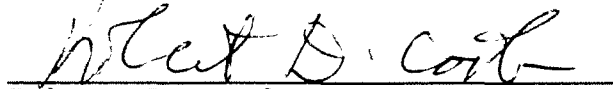
Yours very truly,



James Patrick Hudson  
Chief Deputy Attorney General

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REVIEWED AND APPROVED BY:



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