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# The State of South Carolina



## Office of the Attorney General

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February 16, 1989

The Honorable Patrick B. Harris  
Member, House of Representatives  
213 Blatt Building  
Columbia, South Carolina 29211

Dear Representative Harris:

In a letter to this Office you referenced that a state representative, as an electrical contractor and stockholder in an electric company, is considering placing a bid on a proposed construction project involving lighting a baseball field at a high school. In the representative's letter which you also forwarded, it was stated that the contractor would be contracting directly with the school district and that the state procurement bid procedure would regulate the bidding. You have asked for verification that this type of bid does indeed come under the State Consolidated Procurement Code. You also questioned the applicability of the State Ethics Act, which is set forth in Sections 8-13-10 *et seq.* of the Code, to this situation. It was noted that the representative worked on behalf of the accomplishment of the lighting project earlier. You particularly asked whether the Ethics Act would permit the representative to bid on the project in light of his earlier work as a representative in support of the project.

As to the applicability of the State Consolidated Procurement Code to the referenced bid, Section 11-35-70 of the Code states:

(i) irrespective of the source of funds of any school district whose budget of total expenditures, including debt service, exceeds seventy-five million dollars annually is subject to the provisions of Chapter 35 of Title 11, Code of Laws of South Carolina, 1976 (South Carolina Consolidated Procurement Code) and shall notify the Director of the Division of General Services

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of the Budget and Control Board of its expenditures within ninety days after the close of its fiscal year. However, if a district has its own procurement code which is in the written opinion of the Division of General Services of the State Budget and Control Board substantially similar to the provisions of the South Carolina Consolidated Procurement Code, the district is exempt from the provisions of the South Carolina Consolidated Procurement Code except for a procurement audit which must be performed every three years by the Division of General Services.

Such is consistent with the mandate of Section 11-35-50 of the Code that "(a)ll political subdivisions of the State shall adopt ordinances or procedures embodying sound principles of appropriately competitive procurement...." In a prior opinion of this Office dated February 25, 1986 it was stated that school districts must comply with the State Consolidated Procurement Code or an alternative approved local code during the fiscal year in which its budgeted expenditures are \$75 million dollars or more. The opinion also stated that the district must continue complying in subsequent years even though the budgeted expenditures drop below the referenced sum.

As noted, you also asked whether the State Ethics Act would permit the representative to bid in light of his earlier work as a representative on behalf of the construction project. According to the representative's letter, he made an appearance at a school district board meeting in an effort to encourage the board to cooperate with a county recreation department to insure that the baseball field lighting could be accomplished.

In light of the prior activity of the representative as set forth above, certain provisions of the Ethics Act must be considered. Among the provisions is Section 8-13-410(1) which states

(n)o public official...shall use his official position or office to obtain financial gain for himself.

This Office cannot conclude categorically whether there would be a violation of such provision or any other provision of the Ethics Act if the representative would successfully bid on the same construction project he personally lobbied for at a school board meeting. Instead, that would be a function of the House of Representatives Legislative Ethics Committee. As set forth in Section 8-13-230(4), it is the duty of such committee to "(a)ct as an advisory body to the General Assembly and to individual members of the appropriate house on questions relating to possible conflicts of interest."

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In addition to Section 8-13-410, other provisions of the Ethics Act must be considered. Pursuant to Section 8-13-440, a public official 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 individual.

Generally, pursuant to the State Ethics Act, a business with which a public official is associated may contract with governmental agencies provided the public official took no part in the bid award or decision in his official capacity and the contract, when required, was let through a process of public notice and competitive bidding. See: Opinion of the Attorney General dated April 23, 1986. Section 8-13-410(2) provides in part:

"(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; ..."

Thus, a public official is prohibited from participating in his official capacity in any procurement in which the business with which he is associated has a financial interest.

Section 8-13-500(3) provides:

"It 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."

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It is thus 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.

Should a public official in his official capacity be required to take some action or make some decision which would affect his personal financial interests or the financial interests of a business with which he is associated, he is required to follow the procedures of Section 8-13-460 on that matter. Section 8-13-460 provides in part:

"Any public official or public employee who, in the discharge of his official duties, would be required to take action or make a decision which would substantially affect directly his personal financial interest or those of a member of his household, or a business with which he is associated, shall instead take the following actions:

(a) Prepare a written statement describing the matter requiring actions or decisions, and the nature of his potential conflict of interest with respect to such action or decision.

(b) If he is a legislator, he shall deliver a copy of such statement to the presiding officer of his legislative branch. The presiding officer if requested by the legislator shall cause such statement to be printed in the journal and, upon request, shall excuse a legislator from votes, deliberations, and other such action on the matter on which a potential conflict exists; provided, however, any statement delivered within twenty-four hours after the action or decisions shall be deemed to be in compliance with this section."

Referencing the above, generally a public official's firm may bid on a contract with a governmental body. However, as stated in the opinion of this Office dated April 23, 1986 noted previously, the public official is required to disqualify himself from any actions concerning such contracts in his official capacity.

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The representative should carefully consider his possible bid on the lighting project at the high school in light of the provisions of the Ethics Act noted previously. Furthermore, pursuant to Section 8-13-820, a representative should list any fees, compensation, or benefits received from the State or other governmental entity on his statement of economic interests which is required to be filed.

If there are any questions, please advise me.

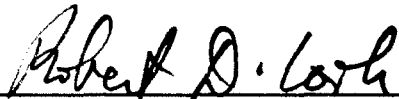
Sincerely,



Charles H. Richardson  
Assistant Attorney General

CHR:sds

REVIEWED AND APPROVED BY:



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