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# The State of South Carolina



## Office of the Attorney General

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September 14, 1989

The Honorable Patrick B. Harris  
Member, House of Representatives  
519B Blatt Building  
Columbia, South Carolina 29211

Dear Representative Harris:

In a letter to this Office you stated that an employee of the House of Representatives has been asked by an individual with a private company to assist in assessing the value of another private company the individual is interested in purchasing. The employee would review the books, contracts and interview the personnel of the company to be purchased to determine its value. The House employee intends to take annual leave in order to perform this service. The company the employee would be reviewing does not have any state contracts. You stated that "this is a private sector interest and in no way conflicts with the employee's responsibility to the State." You have questioned whether there is any conflict with the State Ethics Act, Sections 8-13-10 et seq. of the Code in such an arrangement.

Based upon a review of the Ethics Act, I am unaware of any provisions which would absolutely prohibit the referenced arrangement. However, certain provisions of the Ethics Act must be carefully followed. Among the provisions of the Act to be considered is Section 8-13-410. Such statute states in part that a public employee must avoid using his official position to obtain financial gain for himself. Section 8-13-430 prohibits the payment or receipt of any additional compensation for assistance of a public employee "for advice or assistance given in the course of his employment" as a public employee. Furthermore, pursuant to Section 8-13-440, a public employee cannot use or disclose any confidential information gained by him in the course of or by reason of his official activities or position in a way that would result in financial gain for himself or for any other individual.

Additionally, if the company with which the House employee would be associated would enter into any contracts with the State,

certain additional provisions should be considered. Generally, pursuant to the State Ethics Act, a business with which a public employee is associated is authorized to contract with State governmental agencies provided the employee took no part in the bid award in his official capacity and the contract, in circumstances when required, was awarded through a process of public notice and competitive bidding. Section 8-13-410(2) provides in part:

(2) (n)o 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;

(b) 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.

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

Section 8-13-500(3) provides:

(i)t 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.

It is therefore a violation of the State Ethics Act for a business with which a public employee is associated to enter into a contract with the State in circumstances where the public employee took action relating to the contract in his official capacity. Therefore a

firm with which a public employee is associated may bid on a State contract. However, pursuant to the Ethics Act, the public employee is required to disqualify himself from any actions concerning such contracts in his official capacity.

In addition to the above provisions, one additional provision of the Ethics Act should be considered. Should a public employee in his official capacity be required to take some action 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. 1/ Section 8-13-460 provides in part:

(a)ny 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 action or decisions, and the nature of his potential conflict of interest with respect to such action or decision.

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1/ "Business" is defined as

... any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, and self-employed individual. Section 8-13-20(a)

"Business with which he is associated" is defined as

... any business of which the person or a member of his household is a director, officer, owner, employee or holder of stock worth ten thousand dollars or more at fair market value or which constitutes five percent or more of the total outstanding stock of any class and any business which is a client of the person. Section 8-13-20(b)

(c) If he is a public employee, he shall furnish a copy to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he shall take such action as prescribed by as the State Ethics Commission. If the public official is a member of the governing body of any agency, commission, board, or of any county, municipality, or other political subdivision, he shall furnish a copy to the presiding officer and to the members of that governing body, who shall cause such statement to be printed in the minutes and shall require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists, and shall cause such disqualification and the reasons therefor to be noted in the minutes.

Additionally, in prior opinions, the State Ethics Commission has indicated that public employees may engage in off-duty employment pursuant to specified guidelines. As stated in 1983 Opinion 84-019, such off-duty employment is authorized under guidelines that:

- (1) that no public materials or equipment are utilized,
- (2) such employment does not interfere with the needs of the public agency,
- (3) the public office is not utilized to obtain or continue such employment, and
- (4) such work is engaged in on other than normal working hours.

Also consideration should be given to requesting an opinion of the State Ethics Commission. Pursuant to Section 8-13-130(g), the Commission is authorized to issue advisory opinions interpreting the

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Ethics Act. Such provision states that

... any opinion rendered by the commission, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the person who requested the opinion and who acted in reliance on it in good faith, unless material facts were omitted or misstated by the person in the request for the opinion.

If there are any questions, please advise me.

Sincerely,



Charles H. Richardson  
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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