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June 27, 1988

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 questioned whether it would be a violation of the State Ethics Act, Sections 8-13-10 et seq. of the 1976 Code of Laws, for a state representative to establish a trucking company and serve as an officer of that company in circumstances where the company seeks to take advantage of disadvantaged business enterprise (DBE) benefits. According to a telephone conversation with this legislator, he proposes to offer his trucking company to fulfill requirements established by State law on construction contracts offered by the State Department of Highways and Public Transportation.

Based upon a review of the Ethics Act, I am unaware of any provisions which would absolutely prohibit the legislator's trucking company from taking advantage of the DBE benefits in the circumstances described above. 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 official must avoid using his official position or office to obtain financial gain for himself. Furthermore, pursuant to Section 8-13-440, a public official 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 trucking company would be required to enter into any contracts with the State, certain additional provisions should be considered. Generally, pursuant to the

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State Ethics Act, a business with which a public official is associated may contract with State 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. 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; ...

Thus, a public official 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 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. Therefore a public official's firm may bid on a State contract. However, pursuant to the Ethics Act, the public official is required to disqualify himself from any actions concerning such contracts in his official capacity. Also, pursuant to

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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.

In addition to the above provisions, one additional provision of the Ethics Act should be considered. 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.^{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.

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, and any business which is a client of the person. Section 8-13-20(b)

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(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 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.

If in pursuing the situation described in your letter there are any specific questions about a course of conduct I would be glad to review such with the representative.

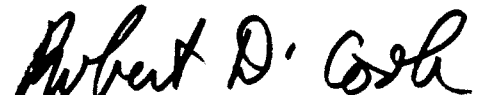
If there are any questions, please advise me.

Sincerely,


Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:


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