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The State of South Carolina



Office of the Attorney General

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April 23, 1986

The Honorable Patrick B. Harris
Chairman, House Legislative Ethics Committee
Room 515 Blatt House Office Building
Columbia, South Carolina 29211

Dear Representative Harris:

Attorney General Medlock has referred me your letter requesting an opinion on behalf of Representative T. W. Edwards. Representative Edwards in a letter to you, a copy of which you forwarded to this Office, indicated that he serves as senior vice president and as one of three general partners of an investment company. The company is involved in the acquisition and building of several projects in this State including apartment complexes, a medical office complex, and a shopping center. You indicated that attention has recently been given to the possibility of bidding on a building for the State of South Carolina. You indicated that any involvement would be in compliance with the State Procurement Code. Referencing such, you questioned whether such proposed activity involving the State would be violative of this State's Ethics Act, Sections 8-13-10, et seq. of the 1976 Code of Laws.

Based upon a review of the Ethics Act it appears that there are no provisions which would absolutely prohibit Representative Edward's company from bidding on a building for the State. However, certain provisions of the Act must carefully be considered. Among the provisions of the State Ethics Act to be considered in evaluating the situation 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

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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 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) 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 is he 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 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."

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Referencing the above, generally 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 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 /an

Charles H. Richardson
Assistant Attorney General

CHR/an

cc: The Honorable T. W. Edwards, Jr.

REVIEWED AND APPROVED BY:

Robert D. Cook

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