

The State of South Carolina



Office of the Attorney General

Opinion No 86-1

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January 7, 1986

The Honorable Herbert Kirsh
Member, House of Representatives
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Dear Representative Kirsh:

In a letter to this Office you referenced that a company owned by a member of the Board of the State Aeronautics Commission has been selling gasoline for and doing repairs on state planes maintained by the State Aeronautics Commission. You questioned whether such practice is legal or ethical.

This Office is aware of a prior opinion of the State Ethics Commission dated December 20, 1977 addressing this same situation. Of course, the Ethics Commission is the proper agency to issue advisory opinions construing provisions of the State Ethics Act. Section 8-13-120(g) of the Code.

Generally, the State Ethics Act, Sections 8-13-410 et seq., of the Code provides that a business with which a public official is associated may contract with governmental agencies provided the public official took no part in the decision. 1/ Several

1/ Business with which a public official 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).

I would further advise that Section 8-13-450 states that "(u)nless otherwise provided by law, no person shall serve as a member of a governmental regulatory agency that regulates any business with which that person is associated." Apparently such provision would be inapplicable to the situation involving the

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provisions of the Ethics Act are of particular relevance.
Section 8-13-410 states:

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

(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.

Section 8-13-500(3) provides that:

(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.

As stated in such provision, it is 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

1/ Continued from Page 1

Aeronautics Commission referenced in your letter. Section 55-5-30 of the Code, as amended, states that "(a)t no time shall there be more than three members of the Commission who are directly engaged in commercial aviation." Assuming that there are currently no more than three members on the Commission engaged in commercial aviation, the provisions of Section 8-13-450 would be inapplicable to the situation addressed in your letter.

public official took action or made a decision as to the contract. In instances where a public official would be required to take action or make a financial decision affecting a business with which he is associated, the procedures set forth in Section 8-13-460 must be followed. Such section states:

(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.

....

(c) ... If the public official is a member of the governing body of an 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.

Consistent with such, a public official's business may bid on and perform work for a governmental agency. However, as stated such public official must remove himself entirely from any actions as to such contract. Also, reference must be made to another provision of the Ethics Act which states:

(n)o public official ... shall use or disclose confidential information gained in the course of or by reason of his official

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position or activities in any way that would result in financial gain for himself or for any other person. Section 8-13-440.

Referencing the above, I am unaware of any State statutory provisions which would absolutely prohibit a company owned by a member of the Board of the State Aeronautics Commission from selling gasoline for and doing repairs on state planes maintained by the State Aeronautics Commission. However, as pointed out, provisions of the State Ethics Act must be complied with in such situation.

If there is anything further, please advise.

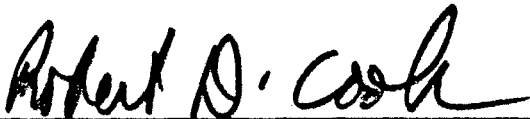
Sincerely,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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