

## The State of South Carolina



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June 2, 1987

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 requested an opinion regarding whether various situations were in violation of the provisions of this State's Ethics Act, Sections 8-13-10 et seq. of the Code. While I will advise you of various provisions of the Ethics Act which may be applicable in the situations presented, this Office cannot in an opinion determine categorically whether such provision would be applicable. That decision depends on varying factual circumstances in each situation.

You first asked whether a violation occurs where a corporation which is headed by a legislator sells property to an association that has an employee who lobbies the General Assembly. You indicated that such employee participated in negotiations as a part of his duties with the association but the governing board of the association made all decisions regarding the transaction and executed the necessary documents.

I am unaware of any provisions of the Ethics Act which would absolutely prohibit the type transaction outlined above. However, several provisions should be noted. Pursuant to Section 8-13-410, a state representative must avoid the use of his official position to obtain financial gain for himself. Also, pursuant to Section 8-13-460, if the representative is faced with a situation in the discharge of his official duties which would require him to take action or make a decision which would substantially affect directly his personal financial interests

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or those of a member of his household or those of a business with which he is associated, the representative must comply with the provisions of Section 8-13-460.<sup>1/</sup> In summary, these provisions require the preparation of a written statement describing the matter requiring action, and the nature of the potential conflict of interest with regard to such action. Such statement is to be delivered to the presiding officer of the House, and if the representative requests, he shall be excused from votes, deliberations and other action on the matter on which the potential conflict of interest exists. Also, Section 8-13-420 prohibits the giving to or acceptance by a public official of compensation to influence his action, vote, opinion or judgment as a public official. Therefore, as to the situation referenced by you, while the transaction would not be absolutely prohibited by the Ethics Act there should be compliance with the above provisions.

You also asked whether there would be a violation of the Ethics Act where a corporation in the construction business which is headed by a legislator contracts to construct a building for a trade association which has an employee who lobbies the General Assembly. You indicated that the governing board of the association made all of the decisions regarding the contract and executed all of the documents involved.

The same provisions noted above, namely, Sections 8-13-410, 8-13-420, and 8-13-460 would also control this situation. Therefore, while such a contract would not be prohibited by the Ethics Act, such provisions must be noted and complied with where appropriate.

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

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As to your third question concerning whether a conflict would exist in the first or second situations if the transactions were with a business entity rather than a trade association, it appears that the response would be the same in either instance.

You additionally asked whether the Ethics Act is violated in circumstances where a legislator votes on an issue in which an association has an interest when that association's political action committee contributed money to the legislator's campaign. Again, I am unaware of any provision of the Ethics Act which would absolutely prohibit a legislator voting on such an issue. However, in such circumstances, the provisions of Section 8-13-410, 8-13-420, and 8-13-460 again must be considered. In particular, Section 8-13-420 which prohibits the giving or accepting of compensation to influence the actions or votes of a public official, should be noted. However, such statute states further:

... (t)he provisions of this section shall not apply to political contributions unless such contributions are conditioned upon the performance of specific actions of the person accepting such contributions....  
(emphasis added.)

Also, where the legislator determines a conflict of interest to exist, pursuant to Section 8-13-460, he may ask to be excused from taking action on the matter where the conflict of interest exists. Whether such a provision or any other provision is violated in the circumstance described by you is a question that cannot be resolved by an opinion of this Office but instead can only be determined by the parties concerned. See: Opinion of the Attorney General dated January 15, 1985.

You next asked whether a conflict exists when a legislator votes on an issue in which an association has an interest when the executive director of the association was the chairman of a group supporting the legislator. As noted above, there are no provisions of the Ethics Act which absolutely prohibit a legislator from voting in such circumstances. However, again, the provisions of Sections 8-13-410, 8-13-420, and 8-13-460 should be noted.

As to your question concerning whether a conflict exists when a legislator votes on any issue in which a contributor to his campaign expressed an interest, as stated, the Ethics Act does not categorically prohibit a vote on any issue. However the various provisions previously noted should be followed where applicable.

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In your last question you asked which of the above situations would require disclosure to be in compliance with the Ethics Act. I am interpreting your question as requesting further clarification of Section 8-13-460. As noted above, such provision could be potentially applicable to all the various situations. As to whether or not there should be disclosure and a request to be excused from voting is a matter which must be resolved by the individual in such a circumstance. As stated, Section 8-13-460 requires disclosure in situations which require action or a decision "which would substantially affect directly the ... (public official's) ... personal financial interest or those of a member of his household or a business with which he is associated...."

If there is anything further, please advise.

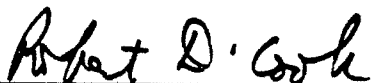
Sincerely,



Charles H. Richardson  
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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