

1984 WL 249805 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 13, 1984

*1 The Honorable Patrick B. Harris
Chairman
House Legislative Ethics Committee
P. O. Box 11867
Columbia, SC 29211

Dear Representative Harris:

In a letter to this Office you indicated that a state representative has been approached by the Medical University of South Carolina regarding his speciality in telephone and telecommunications systems analyzation. In your letter, you enclosed a copy of a draft contract proposing a telecommunications systems survey which would be entered into by the representative and the Medical University.

Based upon a review of the State Ethics Act, [Sections 8-13-10, et seq., Code of Laws of South Carolina](#), 1976, as amended, it appears that there is no prohibition to the proposed arrangement between the Medical University and the representative. However, certain provisions of the Ethics Act must be followed to avoid conflict therewith.

In particular, the state representative must avoid the use of his official position or office to obtain financial gain for himself. This is required by Section 8-13-410, [supra](#). Furthermore, the representative should not solicit or receive any money in addition to that received by him in his official capacity for advice or assistance which should be included in the normal course of the representative's public duties. This means that any action taken by the representative must be unrelated to the activities performed by the representative in his official capacity as a state representative. Such is the requirement of Section 8-13-430, [supra](#). Furthermore, pursuant to the provisions of Section 8-13-440, [supra](#), the representative cannot use or disclose any confidential information gained by him in the course of his official activities in a way that would result in financial gain for himself or for the Medical University.

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, the representative must comply with the provisions of Section 8-13-460, [supra](#). 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 respect to such action. Such statement is to be delivered to the presiding officer of the House, and if the legislator requests, he shall be excused from votes, deliberations, and other actions on the matter on which a potential conflict of interest exists.

The recent enactment of the Consolidated Procurement Code also amended the State Ethics Act to provide in Section 8-13-410, [supra](#), that:

'(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;'

*2 Furthermore, Section 8-13-500(3), [supra](#), 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.'

Therefore, regarding any business transactions with a public agency, such as the Medical University, the public official, in accordance with the above Code Sections, is prohibited from participating in the contract procurement process.

Of course, pursuant to Section 8-13-820, supra, the representative should list any fees received from State agencies on his Statement of Economic Interest.

As long as the representative complies with the restrictions set forth in the State Ethics Act, it appears that he may enter into the proposed arrangement with the Medical University. If there are any further questions, please do not hesitate to contact me. Sincerely,

Charles H. Richardson
Assistant Attorney General

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