

1976 S.C. Op. Atty. Gen. 16 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4233, 1976 WL 25440

Office of the Attorney General

State of South Carolina

Opinion No. 4233

January 22, 1976

*1 Rule AM–R–1, South Carolina Tax Commission, which regulates and in certain cases prohibits outside employment by Commission employees, is rationally related to a valid public purpose and hence constitutionally valid under the Equal Protection Clause of the Fourteenth Amendment.

Honorable Norma C. Russell
Representative
District #90

QUESTION PRESENTED:

Whether South Carolina Tax Commission Rule AM–R–1, “Outside Employment”, effective July 1, 1975, is constitutional.

AUTHORITY:

Title 65, Taxation, Code of Laws of South Carolina, 1962, as amended.

63 Am.Jur.2d § 280, Public Officers and Employees.

[88 ALR2d 1235](#), Public Employee—Outside Occupation.

[San Antonio School District v. Rodriguez](#), 411 US 1, 36 LE2d 16, 93 SCt 1278.

DISCUSSION:

South Carolina Tax Commission Rule AM–R–1, “Outside Employment”, is attached hereto and incorporated herein by reference.

As a matter of common law and public policy, public employees are under a duty to refrain from outside activities which interfere with the proper discharge of their duties. [63 Am.Jur.2d § 280, Public Officers and Employees]. The substantive constitutional validity of regulations forbidding or regulating outside occupations of public employees is regularly sustained by the courts. [[[88 ALR2d 1235](#), Public Employee—Outside Occupation]. While most of the reported cases deal with firemen and policemen, the principles involved are generally applicable.

The standard against which the substantive constitutionality of the Rule at issue must be measured is the “rational basis” test. Statutes and administrative regulations of this type will withstand attack under the Equal Protection Clause of the 14th Amendment so long as the provision is rationally related to a valid public purpose. [[San Antonio School District v. Rodriguez](#), 411 US 1, 36 LE2d 16, 93 SCt 1278]

Rule AM–R–1, in my opinion, meets this standard. The second sentence of the Rule's paragraph 1 indicates the public purpose which the Rule seeks to advance; to wit, (a) efficient performance of official duties, (b) public confidence in state government and (c) avoidance of possible conflicts of interest. These are manifestly valid public purposes.

To achieve the above-referenced public policy considerations, the Rule requires written Commission approval for any outside employment (§1), prohibits outright the receipt by a Commission employee of any compensation, gift or favor in return for preparing a tax return (§2), and prohibits a Commission employee from appearing in behalf of any taxpayer before any governmental agency (§3).

As noted above, all public employees hold positions of trust. This is especially the case for Tax Commission employees, in view of the sensitivity, complexity, scope and importance of matters within the Commission's jurisdiction. Cf. Title 65, Taxation, Code of Laws of South Carolina, 1962, as amended.

*2 It is axiomatic that efficient administration of tax laws and regulations depends in large part on continued public confidence in the total objectivity of those who administer the laws and regulations. The Tax Commission could in its judgment reasonably conclude that the potential for real or apparent conflict of interests exists when any Commission employee is also engaged privately to prepare tax returns or to represent taxpayers in tax matters before government agencies. The Commission might also in its judgment conclude that certain other outside employment might conflict with the public purposes referred-to above, and for that reason it can reasonably require written permission for all outside employment. This being the case, the approach adopted by Rule AM–R–1 in order to attain the public purpose referred to is in my opinion a reasonable one and hence constitutionally valid.

CONCLUSION:

The conclusion is, therefore, as stated in the syllabus hereinabove.

Edward E. Poliakoff
Assistant Attorney General

APPROVED BY:

C. Tolbert Goolsby, Jr.
Deputy Attorney General

AM–R–1

OUTSIDE EMPLOYMENT

1. Employees shall not engage in any outside employment with or without compensation without the written permission of the Commission. Employees shall not engage in any outside employment or other activities with or without compensation which (a) interfere with the efficient performance of official duties, (b) might bring discredit on or cause unfavorable and justifiable criticism of the State of South Carolina or, (c) might reasonably result in a conflict of interest or an apparent conflict of interest with official duties and responsibilities.
2. Employees of the Tax Commission are prohibited from accepting directly or otherwise any compensation, gift, or favor for preparing a tax return.
3. No employee of the Tax Commission may appear on behalf of any taxpayer as his attorney, agent, factor, or representative, before any governmental agency, Federal, State, or local, in an action involving a tax matter.
4. This Rule shall be effective July 1, 1975.

1976 S.C. Op. Atty. Gen. 16 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4233, 1976 WL 25440

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.