

1975 S.C. Op. Atty. Gen. 195 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4123, 1975 WL 22419

Office of the Attorney General

State of South Carolina

Opinion No. 4123

September 18, 1975

*1 The Honorable James B. Edwards
Governor of South Carolina
State House
Columbia, South Carolina 29211

Dear Governor Edwards:

You have requested my opinion as to whether appointment of Mr. James DuPre to serve as a member of the State Ethics Commission would be consistent with the Act which establishes the Commission. (Act No. 191, 1975 Acts 217). Your inquiry states that Mr. DuPre is a contractor who bids on State jobs from time to time.

Section 3 of the Act provides in part that '[n]o member of the General Assembly or other public official shall be eligible to serve on the State Ethics Commission.' This means that no one who is already a public official may become a member of the Commission.

Merely because he bids on State jobs would not of itself cause a private contractor to be classified as a public official so as to preclude his serving on the Commission. Should the appointment be approved, however, Mr. DuPre would, as a member of the Commission, become a public official within the meaning of the Act and would be subject to all of the Act's Rules of Conduct and Economic Interest disclosure requirements.

Reference is made in your inquiry to § 19, one of the Act's Rules of Conduct. Section 19 provides as follows:

No public official or public employee and no business with which a public official or public employee is associated shall enter into any contract with a governmental agency or department which is to be paid in whole or in part out of governmental funds, where such a contract is normally awarded through a process of public notice and competitive bidding, unless the contract has been awarded through a process of public notice and competitive bidding.

This section does not preclude Mr. DuPre from serving on the State Ethics Commission. It does mean, however, that whenever a given government contract 'is normally awarded through a process of public notice and competitive bidding . . .', neither Mr. DuPre nor any 'business with which he is associated', as defined in § 2(b), may enter into the contract unless the public notice and competitive bidding requirements are followed. The question of which government contracts are 'normally awarded through a process of public notice and competitive bidding' is not addressed in this opinion letter.

Very truly yours,

Daniel R. McLeod
Attorney General

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