

1975 WL 29132 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 9, 1975

\*1 Mr. Buck Mickel  
Chairman of the Board  
Daniel International Corporation  
Daniel Building  
Greenville, South Carolina

Dear Mr. Mickel:

Admiral McDevitt, University Counsel of Clemson University, has requested that I write you with respect to how your position as a life Trustee of Clemson University might legally affect Daniel International Corporation's contractual status with the University.

I have had an analysis prepared by Mr. Ed Poliakoff of this Office, who is assigned to the Ethics Commission created by the last session of the General Assembly, which goes extensively into this problem. I am enclosing it herewith in case you may be interested in submitting it to your Counsel, but I am also submitting herein my views on the matter.

For a number of years I have expressed the view that a member of a governing body of a public agency could not contract with that agency. The cases in this State, as well as general common law principles, support this view.

With the advent of the Ethics legislation, a new situation may, however, be presented. The legislation creating the Ethics Commission leaves many murky areas which can most probably be settled or clarified by advisory opinions which the Commission is authorized to issue or by its rules and regulations. The Commission is not now in existence because of the failure of the General Assembly to confirm the appointments submitted to it by the Governor in the waning days of the last session. The Commission therefore is nonexistent and cannot act until it is duly constituted, which will occur, I would assume, sometime in the early part of 1974 after the convening of the Legislature.

In the meantime, there are some parts of the Ethics statute which would indicate that a public official (and I would think that you as a Trustee would clearly come within that designation) may contract with a governmental agency where the contract has been awarded through a process of public notice and competitive bidding. This is applicable also to the business with which the public official is associated. See Section 19 on the last page of the enclosed memorandum.

Other provisions of the Ethics law require that he as a public official remove himself from influence over any potential conflict and that he submit written statements of his possible potential conflict of interest. The pertinent sections are set forth on the last two pages of the enclosure.

It may be that a public official would be warranted in following these statutes as they are written but I would strongly suggest that the wisest approach would be to wait until the Ethics Commission is functioning and then secure from it an advisory opinion with respect to the possible application of this law in given circumstances. Such an advisory opinion is not only authorized but, in my view, would have the effect of removing any possible stigma, further action or criticism.

We have expressed the opinion heretofore that the Ethics law not only reaches the agency of which the individual may be a member of the governing body but also reaches any other governmental agency. The need for advisory opinions or regulations by the Commission is indicated in this area, as well as possible statutory revision.

\*2 To avoid any embarrassment, I would suggest that you refrain from any contractual arrangements with Clemson University until the Ethics Commission is established and operating.

With best wishes,  
Cordially,

Daniel R. McLeod  
Attorney General

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