



Office of the Attorney General

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November 1, 1990

The Honorable Patrick B. Harris
Member, House of Representatives
Box 655
Anderson, South Carolina 29622

Dear Representative Harris:

In a letter to this Office you posed a question on behalf of a candidate for the House of Representatives whose firm specializes in providing equipment lease financing for commercial clients as well as local governments such as counties, school districts and special purpose districts. You stated that the individual's firm funds most transactions with a particular corporation. Assuming the individual is elected to the House, you asked whether a retainer relationship between the individual's firm, of which the individual is principal stockholder, and the referenced corporation for the purpose of originating lease/purchase transactions with local governments would be prohibited by the State Ethics Act, Sections 8-13-10 et seq. of the Code. You indicated no transactions with the State would be involved.

The Ethics Act contains several provisions which must be followed in circumstances such as that described in your letter. In particular, a 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, a 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 any other person.

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Generally, a business with which a public official is associated may contract with governmental entities in circumstances where the public official took no part in the bid award or decision and the contract, when required, was let through a process of public notice and competitive bidding. 1/ Section 8-13-410(2) provides in part:

(2) (n)o 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; ...

Thus, a public official is prohibited from participating in any procurement in which the business with which he is associated has a financial interest.

Section 8-13-500(3) provides:

(i)t 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

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 or which constitutes five percent or more of the total outstanding stock of any class and any business which is a client of the person. Section 8-13-20(b)

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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.

It is therefore a violation of the State Ethics Act for a business with which a public official is associated to enter into a contract with the State where the public official took action or made decisions concerning the contract in his official capacity. Typically, a public official's firm may bid on a government contract. However, pursuant to the Ethics Act, the public official is required to disqualify himself from any actions concerning such contracts in his official capacity. Also, pursuant to Section 8-13-820, a representative should list any fees, compensation, or benefits received from the State or other governmental entity on his statement of economic interests which is required to be filed.

In addition to the above provisions, one additional provision of the Ethics Act should be considered. Should a public official in his official capacity be required to take some action or make some decision which would affect his personal financial interests or the financial interests of a business with which he is associated, he is required to follow the procedures of Section 8-13-460 on that matter. Section 8-13-460 provides in part:

(a)ny public official or public employee who in the discharge of his official duties, would be required to take action or make a decision which would substantially affect directly his personal financial interest or those of a member of his household, or a business with which he is associated, shall instead take the following actions:

(a) Prepare a written statement describing the matter requiring action or decisions, and the nature of his potential conflict of interest with respect to such action or decision.

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(b) If he is a legislator, he shall deliver a copy of such statement to the presiding officer of his legislative branch. The presiding officer if requested by the legislator shall cause such statement to be printed in the journal and, upon request, shall excuse a legislator from votes, deliberations, and other action on the matter on which a potential conflict exists; provided, however, any statement delivered within twenty-four hours after the action or decisions shall be deemed to be in compliance with this section.

Referencing the above, there are no provisions in this State's Ethics Act which categorically state that it is a per se conflict of interest for a member of the General Assembly to do business with local governments. However, as discussed, in such circumstances care should be taken to avoid any conflict with the Ethics Act.

If there is anything further, please advise.

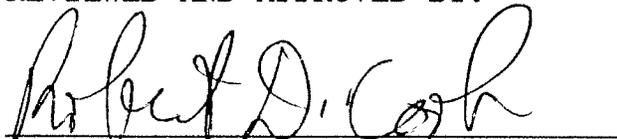
Sincerely,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions