

The State of South Carolina



Office of the Attorney General

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March 23, 1988

The Honorable Alexander S. Macaulay
Member, South Carolina Senate
Suite 612
Gressette Senate Office Building
Columbia, South Carolina 29202

Dear Senator Macaulay:

In a letter to this Office you indicated that Mr. James L. Pasley is seeking election to a new term on the State Health and Human Services Finance Commission (hereafter the Commission). A question has been raised regarding such election in light of the provisions of Section 44-6-10 of the Code which state in part:

(n)o person may be elected who has a conflict of interest ... For the purpose of this chapter, a conflict of interest includes, but is not limited to, situations in which an individual's business interests or fiduciary obligations are affected by the decisions of the Commission

In a letter from Mr. Pasley to the State Ethics Commission, which was attached to your letter requesting the opinion, Mr. Pasley states:

I am writing you to advise you that I have accepted employment as the Operation Manager with the Coastal Rapid Public Transit Authority, 1418 3rd Avenue, Conway, South Carolina 29526.

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The Coastal Rapid Public Transit Authority receives some Title XIX (Medicaid) transportation funds. These funds pass through the HHSFC to the Governor's Office. The Governor's Office through General Services issued competitive bids for these services, and my employer made a successful offer and expects to receive approximately \$284,000.

In his letter Mr. Pasley notes that the referenced Title XIX transportation funds are awarded competitively consistent with the State Procurement Code. He also notes that he will refrain from voting on transportation issues that could impact on his employment. However, this Office has not been able to more fully develop the role of the Commission in regards to the receipt of the funds by Mr. Pasley's employer due to the urgency of the request for an opinion on this matter.

As referenced above, Section 44-6-10 prohibits the election to the Commission of an individual "who has a conflict of interest." A conflict of interest "includes ... situations in which an individual's business interests .. are affected by the decisions of the Commission." Such a standard appears to be more rigorous than the standard established by the State Ethics Act, Sections 8-13-10 et seq. of the Code. Pursuant to Section 8-13-460, a public official is authorized to take steps to excuse himself from votes, deliberations and other actions on matters where there is a potential conflict of interest which would "substantially affect directly" the interests of a business with which the public official is associated. There is no similar provision for removal of a member of the Commission. Instead, as stated, an individual with a conflict of interest is prohibited from being elected to the Commission; a conflict of interest includes situations where an individual's business interests are affected by Commission decisions.

The term "business interests" is not further defined. However, as referenced in a prior opinion of this Office dated April 17, 1985

... (t)he term "business" is commonly used "in connection with an occupation for livelihood or profit" ... "a pursuit or occupation of a commercial or mercantile nature to obtain a livelihood"

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The opinion dealt with the construction of Section 43-1-25 which prohibits a member of the State Board of Social Services from having "... any interest in any business which contracts with the Department of Social Services to provide services." Construing the phrase "any business," the opinion resolved that "... all pursuits or occupations in which one earns a livelihood or profit would be included within the phrase...."

Also, the definition of "business with which he is associated" as found in the State Ethics Act may be useful. Section 8-13-20(b) defines such term as "... any business of which the person ... is a director, officer, owner, employee or holder of a stock worth ten thousand dollars or more at fair market value, and any business which is a client of the person." (emphasis added) Arguably, therefore, the term "an individual's business interests" could include a business which employs that individual.

Mr. Pasley has described the recent receipt of Title XIX transportation funds by his employer. As described by him, the Title XIX funds "pass through" the Commission to the Governor's office which, through the Division of General Services, awards these funds based on competitive bids. This Office has not been advised precisely on what discretion, if any, the Commission exercises with regard to these Title XIX funds. Arguably, if the Commission serves as a mere conduit of such funds there may not be any basis for an allegation of conflict of interest. However, such a resolution may not be in order if the Commission exercises any discretion with regard to such funds or makes any decisions which may ultimately impact on the receipt of such funds by a beneficiary. The duties of the Commission as set forth in Section 44-6-30 et seq. of the Code do not specify exactly what the duties of the Commission would be with regard to funds such as those received by Mr. Pasley's employer. However, Section 44-6-30(1) does state that the Commission shall "... (a) administer Title XIX of the Social Security Act"

As stated, this Office cannot in an opinion at this time absolutely determine whether a conflict of interest exists which would prevent Mr. Pasley's election to the Commission. A detailed explanation of the duties of the Commission in regard to funds such as those received by Mr. Pasley's employer would have to be provided in order to accurately make such a determination.

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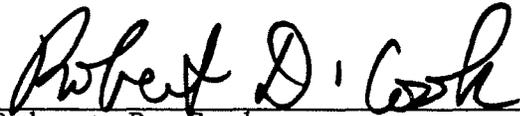
If there is anything further, please advise.

Sincerely,


Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:


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