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The State of South Carolina



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July 30, 1985

The Honorable Patrick B. Harris
Member, House of Representatives
Box 655
Anderson, South Carolina 29621

Dear Representative Harris:

In a telephone conversation you questioned whether pursuant to this State's Ethics Act, Section 8-13-10 et seq. of the 1976 Code of Laws it would be a conflict of interest for a member of the General Assembly to do business with a State, county or municipal governmental entity. An example of "doing business", as provided by you, would be selling a particular service or commodity to the governmental entity.

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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If the representative is faced with a situation, in the discharge of his official duties, which would require him to take action or make a decision which would substantially affect directly his personal financial interests or those of a member of his household or of a business with which he is associated, the representative must comply with the provision of Section 8-13-460, supra.^{1/} In summary, these provisions require the preparation of a written statement describing the matter requiring action, and the nature of the potential conflict of interest with respect to such action. Such statement is to be delivered to the presiding officer of the House, and if the representative requests, he shall be excused from votes, deliberations, and other action on the matter on which a potential conflict of interest exists.

The enactment of the Consolidated Procurement Code also amended the State Ethics Act to provide in Section 8-13-410, supra, that:

"(2) No 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;

part ^{1/}as: "Business with which he is associated" is defined in

"... 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, and any business which is a client of the person." Section 8-13-20(b).

"Business" is defined as:

"... any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization and self-employed individual." Section 8-13-20(a).

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- (b) any other person, business, or organization with whom he or a member of his household is negotiating or has an arrangement concerning prospective employment is involved in the procurement."

Furthermore, Section 8-13-500(3), supra, provides:

"It 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 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."

Therefore, regarding any business transactions with a public agency, a representative, in accordance with the above provisions, is prohibited from participating as specified in any procurement in which he or a business with which he is associated has a financial interest. Also, as stated, it is 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.

Also of course, pursuant to Section 8-13-820, supra, a representative should list any fees, compensation, or benefits received from the State or other governmental entity on his Statement of Economic Interest.

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 a state, county or municipal governmental entity.

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However, as discussed, in such circumstances care should be taken to avoid any conflict with the Ethics Act.

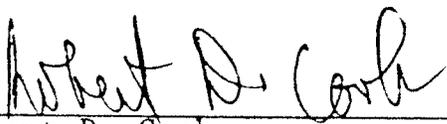
If there is anything further, please advise.

Sincerely,


Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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