

1983 WL 181935 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 7, 1983

*1 The Honorable Warren D. Arthur IV
Representative
District No. 57
304-B Blatt Building
Columbia, South Carolina 29211

Dear Representative Arthur:

Mr. Medlock has referred to me your letter questioning whether you may participate in the acquisition for the insurance company with whom you are employed of any insurance business with the State of South Carolina. The response provided below deals with the effect of this State's Ethics Act on such activity.

Generally, pursuant to the State Ethics Act, a business with which a public official is associated may contract with State governmental agencies provided the public official took no part in the bid award or decision in his official capacity and the contract, when required, was let through a process of public notice and competitive bidding.

[Section 8-13-410\(2\), Code of Laws of South Carolina](#), 1976, as amended, provides in part:

'(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; . . .'

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

[Section 8-13-500\(3\), Code of Laws of South Carolina](#), 1976, as amended, 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.'

It is thus 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. Should the public official be required to take some action or make some financial decision which will affect the financial interests of a business with which is he associated, he is required to follow the procedures of [Section 8-13-460, Code of Laws of South Carolina](#), 1976, as amended, on that matter. [Section 8-13-460](#) provides in part:

'Any 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:

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

(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, generally a public official's firm may bid and perform a contract with governmental agencies. However, the public official is required to disqualify himself from any actions concerning such contracts in his official capacity. As to your specific situation, in your private capacity with the insurance company, you may participate in the acquisition for such company of insurance business which was out for bid by the State of South Carolina. However, as referenced above, the State Ethics Act prevents you from acting in your public capacity in such acquisitions.

If there are any questions, please advise me.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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