

This Advisory Opinion is withdrawn effective September 17, 2020

SEC AO92-101

February 26, 1992

SUBJECT: POST-EMPLOYMENT RESTRICTIONS

SUMMARY:

A former employee is prohibited from obtaining employment for one year from a contractor on contracts for which he was responsible for letting or supervising. The former employee would not be prohibited from being employed as a consultant with a firm over which he had no official responsibility.

QUESTION:

A retired state employee whose duties involved supervision of contractors' work questions his acceptance of employment with certain businesses or contractors. He questions whether he can accept employment within a year from a contractor who received and continues to receive contracts from his former agency. He also questions whether he may seek employment with a contractor performing work in another part of the state over which he provided no supervision. He further questions whether such restrictions apply to material suppliers used by the contractors. A further question is whether he may seek employment with a consulting firm which has obtained contracts from his former agency.

DISCUSSION:

This opinion is rendered in response to a letter dated January 23, 1992 requesting an opinion from the State Ethics Commission.

The Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act No. 248 of 1991; Section 8-13-100 et. seq., as amended, 1976 Code of Laws). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation.

Section 8-13-755 provides:

A former public official, former public member, or former public employee holding public office, membership, or employment on or after January 1, 1992, may not for a period of one year after terminating his public service or employment:

- (1) serve as a lobbyist or represent clients before the agency or department on which he formerly served in a matter which he directly and substantially participated during his public service or employment; or
- (2) accept employment if the employment:

- (a) is from a person who is regulated by the agency or department on which the former public official, former public member, or former public employee served or was employed; and
- (b) involves a matter in which the former public official, former public member, or former public employee directly and substantially participated during his public service or public employment.

This prohibition concerns any employee who was employed by a public agency within South Carolina on or after January 1, 1992. This restriction includes a prohibition against serving as a lobbyist before the former agency or representing clients before that agency for a period of one year on matters on which the employee directly and substantially participated. It does not appear that the agency with which the former employee was associated regulates, but instead contracts and supervises such contracting work.

The State Ethics Commission further calls attention to Section 8-13-760 which provides:

Except as is permitted by regulations of the State Ethics Commission, it is a breach of ethical standards for a public official, public member, or public employee who is participating directly in procurement, as defined in Section 11-35-310(22), to resign and accept employment with a person contracting with the governmental body if the contract falls or would fall under the public official's, public member's, or public employee's official responsibilities.

This prohibition includes employment from a contractor whose contracts the employee had responsibility for letting or supervising. The Commission has previously advised that when such employee has not been involved with the affected contractor for a period of one year that such employment would not be prohibited.

Section 11-35-310(22) provides as follows:

"Procurement" means buying, purchasing, renting, leasing or otherwise acquiring any supplies, services or construction. It also includes all functions that pertain to the obtaining of any supply, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

As to the final question, the restriction contained in Section 8-13-760 applies to a contract over which the former employee would have responsibility for either letting, supervising, or otherwise taking action on. Absent such direct responsibility, the Commission knows of no reason why the former employee could not go to work for such consulting firm.