

SUBJECT: DEPARTMENT OF EDUCATION EMPLOYEE CO-AUTHORING BUSINESS EDUCATION TEXTS

SUMMARY:

An employee of the Department of Education would not be prohibited from co-authoring textbooks consistent with the off-duty employment guidelines. She is cautioned to follow the provisions of Section 8-13-700(B) and of the restriction of Section 8-13-775.

QUESTION:

The Director of the Office of Occupational Education has co-authored business education texts/simulations in the area of word processing. Some of the materials have been adopted by schools in South Carolina, however, she did not serve on the committees which selected those materials for recommendation. Individuals who work on her staff work with the adoption of materials, however, she has made a concerted effort to never discuss her materials with those members who coordinate the adoption committee activities. When she was originally encouraged to author materials, she was told to never speak or publicize her materials in South Carolina and to never participate in committee meetings where her materials would be discussed.

DISCUSSION:

This opinion is rendered in response to a letter dated January 6, 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 8-13-700(A) provides in part as follows:

(A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use which does not result in additional public expense.

In prior advisory opinions, the State Ethics Commission has advised that a public employee may engage in outside employment consistent with established guidelines: (1) that no public materials or equipment are utilized, except as provided by Section 8-13-700(A), (2) such work is engaged in on the employee's own time, (3) the work does not interfere with the needs of the agency, and (4) the public position is not utilized to obtain or continue the employment.

Authorship of a textbook would not be prohibited by the Ethics Reform Act. However, the State Ethics Commission calls attention to the provisions of Section 8-13-775 which provides:

A public official, public member, or public employee may not have an economic interest in a contract with the State or its political subdivisions if the public official, public member, or public employee is authorized to perform an official function relating to the contract. Official function means writing or preparing the contract specifications, acceptance of bids, award of the contract, or other action on the preparation or award of such contract. This section is not intended to infringe on or prohibit public employment contracts with this State or a political subdivision of this State.

Further, the Commission calls attention to the provisions of Section 8-13-700(B) which provides in part as follows:

(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a member of his immediate family an individual with whom he is associated, or a business with which he is associated shall:

(1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;

* * *

(3) if he is a public employee, he shall furnish a copy of the statement to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he shall take the action prescribed by the State Ethics Commission;

Thus, if it is part of the employee's official function as defined in Section 8-13-775 concerning textbook contracting, she is advised that she can not contract with the Department. If there is no official function involved, she is advised to follow the provisions of Section 8-13-700(B) on matters requiring her action or decision affecting the adoption of such textbook.