

SUBJECT: POST-EMPLOYMENT

SUMMARY: An employee engaged in certification and permitting would be prohibited from seeking employment from an engineering firm for a period of one year, when such employment involves a certification or permitting matter in which the employee was directly and substantially involved.

QUESTION: The General Counsel for the SC Coastal Council advises that the Council employs engineers in their certification and permitting departments with projects in the coastal zone. One of the engineers deals closely with the issuance of permits within the critical area and non-critical area certifications of other state and federal permits and activities. The Counsel states that in the event this engineer accepts employment with an engineering firm doing business in the coastal zone, it is very likely this engineer will deal with matters within her expertise that are affected by the Coastal Zone Management Act. He questions: Does Section 8-13-755(2) prohibit a state engineer from immediately entering into employment with a private engineering firm which routinely has projects reviewed by the agency for whom the state engineer worked, provided the engineer agrees not to work on any projects which were pending before the agency at the time of resignation.

DISCUSSION:

This opinion is rendered in response to a letter dated April 14, 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(2) 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:

* * *

- (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.

Section 8-13-755(2) was intended to prohibit the "revolving door" whereby a regulator leaves public service and begins work with a regulated person on matters in which he had participated as a regulator. Section 8-13-755(2) has a two step process whereby the person offering the employment must be regulated and the future employment must involve a specific matter on which the employee participated.

Section 8-13-755 does not define the term "specific matter", however, the State Ethics Commission advises that a specific matter includes a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, rulemaking, or legislation. .

Similarly, "directly and substantially participated" is not defined by the Ethics Reform Act. "Direct" means "without intervening medium, agency, or influence". As to whether involvement is substantial, the Commission notes Black's Law Dictionary which states:

Of real worth and importance; of considerable value; valuable. Belonging to substance...Synonymous with material.

Further, participation includes decision, approval, disapproval, recommendation, the rendering of advice, or vote. Thus, the State Ethics Commission considers "directly and substantially participated in a specific matter" to include involvement in a specific issue of import to the agency in which the employee took part in more than a nominal manner.

It appears from the facts as submitted that there is a regulatory function provided in certification and permitting, therefore, any employee engaged in such certification and permitting would be prohibited from seeking employment from an engineering firm for a period of one year, when the employment involves a certification or permitting matter in which the employee was directly and substantially involved. Thus, the employee of the Coastal Council is not prohibited by Section 8-13-755(2) from seeking employment from an engineering firm, however, the employment may not involve participation as an employee of that firm on a specific matter on which the employee took action for a one year period following termination of public employment.