

SUBJECT: COUNTY ATTORNEY'S LAW FIRM REPRESENTING PERSONNEL COVERED BY COUNTY WORKERS' COMPENSATION AND VEHICLE INSURANCE

SUMMARY:

The spouse of a County Attorney is advised against representing clients in actions against the County's insurance provider since the county has a stake in the outcome of any such action.

QUESTION:

The Allendale County Administrator questions whether there is an ethical problem involving the law firm of the County Attorney. The County Attorney is employed on a part-time basis. The County Attorney is a law partner with her spouse. The spouse represents two EMS personnel injured in an accident to the County's insurance provider. The EMS personnel are volunteers who are covered by the County's workers' compensation and vehicle insurance. The County Attorney is provided with all information relating to the accident.

DISCUSSION:

This opinion is rendered in response to a letter dated May 1, 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 8-13-100((25) defines public employee as:

...a person employed by the State, a county, a municipality, or a political subdivision thereof.

By being employed on a fee basis as a part-time employee of the county, the County Attorney is a public employee for the purposes of the Ethics Reform Act.

Section 8-13-700(A) provides:

(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 addition, 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;

The Commission further calls attention to the provisions of Section 8-13-725:

No public official, public member, or public employee may use or disclose confidential information gained in the course of or by reason of his official responsibilities in any way that would affect an economic interest held by himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated.

In Advisory Opinion 86-030, the Commission reviewed a number of earlier opinions concerning the representation of clients issue. In that opinion, the Commission advised that representation of clients when the agency had a stake in the outcome would be prohibited. In Advisory Opinion AO92-001, the Commission advised a City Attorney against representing clients in General Session Court when the city is the arresting agency.

From the facts as submitted, it appears that the County has an interest in the outcome of the representation of the county employees against the insurance carrier due to possible further litigation, increased premiums, etc. The State Ethics Commission advises the law firm against representation of clients in matters in which the County has a stake in the outcome.