

SUBJECT: OFF-DUTY EMPLOYMENT OF BUILDING CODES EMPLOYEES

SUMMARY:

County Building Inspectors would not be prohibited from off-duty employment with a local electrical builder or a local plumber, consistent with the off-duty employment guidelines, unless such work is for a regulated business and creates a frequent or continuing conflict.

QUESTION:

Three employees of the Building Standards Codes Department of Greenville County request an advisory opinion concerning off-duty employment in accordance with Section 8-13-730. Two are Electrical Inspectors who do electrical work outside of Greenville County on the weekends for a friend who owns an electrical contracting firm. The third employee is a Plumbing Inspector who does part-time and weekend plumbing work with his brother. He is paid by the hour for his off-duty work, and he does not inspect any of his own work. Moreover, he does not inspect building contractors for which his brother has worked.

DISCUSSION:

This opinion is rendered in response to a letters dated June 15, 16 and July 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.

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. Provided such work is done consistent with those guidelines, the Commission knows of no reason why building inspectors could not conduct off-duty work for contractors for whom they have no responsibility to inspect.

Section 8-13-700(A) provides 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.

The Commission advises, however, that such work should be discontinued if and when the contractors begin work within the area of jurisdiction of the building inspectors in accordance with Sections 8-13-705 and 8-13-730. Section 8-13-705 provides in part as follows:

(A) A person may not, directly or indirectly, give, offer, or promise anything of value to a public official, public member, or public employee with the intent to:

- (1) influence the discharge of a public official's, public member's, or public employee's official responsibilities;
- (2) influence a public official, public member, or public employee to commit, aid in committing, collude in, or allow fraud on a governmental entity; or
- (3) induce a public official, public member, or public employee to perform or fail to perform an act in violation of the public official's, public member's, or public employee's official responsibilities.

(B) A public official, public member, or public employee may not, directly or indirectly, knowingly ask, demand, exact, solicit, seek, accept, assign, receive, or agree to receive anything of value for himself or for another person in return for being:

- (1) influenced in the discharge of his official responsibilities;
- (2) influenced to commit, aid in committing, collude in, allow fraud, or make an opportunity for the commission of fraud on a governmental entity; or
- (3) induced to perform or fail to perform an act in violation of his official responsibilities.

Section 8-13-730 provides in part as follows:

...No person may be an employee of the regulatory agency which regulates a business with which he is associated if this relationship creates a continuing or frequent conflict with the performance of his official responsibilities.

Section 8-13-730 does not restrict an employee from having an association with a regulated business unless it poses a continuing or frequent conflict of interests, i.e., that the employee is required to follow the procedures of Section 8-13-700(B) continually or frequently. Section 8-13-700(B) 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.

Therefore, if the employees are required to follow the procedures of Section 8-13-700(B) on a continuing or frequent basis, they are advised to disassociate themselves from such business relationship creating the conflict.