

SUBJECT: OFF-DUTY EMPLOYMENT OF DEPARTMENT OF SOCIAL SERVICES  
EMPLOYEE TO PERFORM A FEASIBILITY STUDY

SUMMARY:

A Department of Social Services County Director may contract with a corporation to perform a feasibility study on the building of a residential care facility in accordance with the off duty employment guidelines.

QUESTION:

The Employee Relations Supervisor for the South Carolina Department of Social Services requests an advisory opinion concerning whether a DSS County Director may contract with a corporation to conduct a feasibility study, on his own time, regarding the construction of a residential care facility. If the facility is constructed and elects to accept Medicaid recipients, the County DSS Office would be responsible for making referrals to the facility, regardless of race, creed, sex color, national origin or religion.

DISCUSSION:

This opinion is rendered in response to a letter dated July 13, 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.

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.

Moreover, the State Ethics Commission calls attention to the requirements 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;

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(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;

From the facts submitted, it appears that the off-duty employment would not fall within the scope of the County DSS Director's official responsibilities. Accordingly, he would not be prohibited from contracting with a corporation to conduct a feasibility study as long as he complies with the above-quoted guidelines and the provisions of Section 8-13-700(B) regarding any matters affecting the economic interests of the corporation.