

SUBJECT: POST-EMPLOYMENT RESTRICTIONS

SUMMARY:

After leaving government service, an employee of a public agency would not be prohibited from accepting employment with a private business; however, he is prohibited from lobbying the agency or representing clients on matters in which he personally and substantially participated before the agency for a period of twelve months from the date of leaving employment.

QUESTION:

An employee of a state agency is contemplating leaving public service and is seeking a position with a consultant engineering firm. The employee has never served in a position requiring his direct and substantial participation in a project with which his prospective employer was involved. In the past year, the employee was in the chain of command which reviewed design plans on a project this particular firm is undertaking for the agency. Nevertheless, the employee was not the engineer directly responsible for managing the project. Moreover, the employee has never served on a consultant selection committee that has chosen this firm to provide services for the agency.

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.

Section 8-13-755 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:

(1) serve as a lobbyist or represent clients before the agency or department on which he formerly served in a matter which he directly and substantially participated during his public service or employment; or

(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.

This prohibition concerns any employee who was employed by a public agency within South Carolina on or after January 1, 1992. This restriction includes a prohibition against serving as a lobbyist before the former agency or representing clients before that agency for a period of one year on matters on which the employee directly and substantially participated. 'Directly' is often defined as "without [any] intervening agency or person. . . not by secondary but by direct means." 26(a) C.J.S. pp. 956, 957. See also, Tangen v. State Ethics Commission, 550 P.2d 1275 (1976). 'Substantially' is a more difficult word to define. In fact, substantial has been said to be "as elusive a word as the English language contains." 83 C.J.S. p. 762. However, considering the context, the Commission finds substantially as "of real worth and importance; of considerable value; valuable." Tax Commission of Ohio v. American Humane Education Soc., et al., 181 N.E. 557 (1931). See also, 83 C.J.S. p. 762. According to the facts submitted, the former employee's participation with this particular project was limited to gathering reviewing design plans. Therefore, it is difficult to characterize such involvement as "direct and substantial" within the meaning of the Ethics Act. The agency with which the employee is associated does not appear to have a regulatory function; therefore, the restrictions contained in Section 8-13-755(2) would not apply. The State Ethics Commission knows of no restrictions, other than those outlined in Section 8-13-755(1), which would restrict the prospective work to be done by the employee.