

SUBJECT: SERVICE PROVIDER SERVING ON CITY COUNCIL AND REGIONAL COG

SUMMARY:

A public official who is authorized to perform an official function regarding a contract as defined in Section 8-13-775 would be prohibited from bidding on and performing such contract unless the contract is awarded in accordance with the Consolidated Procurement Code. Absent this official function, a city council member's firm would be permitted to bid on and perform such contract, provided the procedures of Section 8-13-700(B) are followed.

QUESTION:

A member of Sumter City Council who also serves on the Policy Board of the Santee-Lynches Regional Council of Governments is also the President of a consulting and training company. His company works with the public and private sector in areas of work force assessment, evaluation, training, and communications. He questions whether there is a conflict in his company's competing for proposals from the Santee Lynches Public Industry Council in the JTPA program.

DISCUSSION:

This opinion is rendered in response to a letter dated November 18, 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.

The State Ethics Commission does not address the issue of who may serve on public or private boards and commissions. However, in prior advisory opinions, the Commission has addressed actions to be taken by public members on matters affecting their economic interests, the interests of a member of their household, or a business or individual with which they are associated.

In Advisory Opinion SEC AO92-075, the Commission advised that a public member is required to provide a written statement describing any conflict of interests and then must not participate in any matter affecting his economic interests of \$50 or more. 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;

* * *

(4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of any agency, commission, board, or of any county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause such disqualification and the reasons for it to be noted in the minutes;

The State Ethics Commission, however, notes that Section 8-13-775 provides:

A public official, public member, or public employee may not have an economic interest in a contract with the State or its political subdivisions if the public official, public member, or public employee is authorized to perform an official function relating to the contract. Official function means writing or preparing the contract specifications, acceptance of bids, award of the contract, or other action on the preparation or award of such contract. This section is not intended to infringe on or prohibit public employment contracts with this State or a political subdivision of this State.

The public official is prohibited from contracting with the council or the COG if he is authorized to perform any official function on the contract through writing or preparing specifications, acceptance of bids, award of the contract, or other action on the preparation or award of such contract, regardless of whether the provisions of Section 8-13-700 were followed.

Section 8-13-785(B) which provides as follows:

The provisions of Articles 1 through 11 of this chapter do not prohibit a public official from contracting with the State or a governmental entity when the contract is awarded in accordance with Chapter 35 of Title 11.

Therefore, if the public official is authorized to perform any official function on the contract, his firm may have an interest in the contract only if the contract is awarded in accordance with the provisions of Chapter 35 of Title 11 (the Consolidated Procurement Code). Absent such

authorization to perform an official function regarding the contracts, the city councilman is not prohibited from bidding on and performing contracts, provided that the requirements of Section 8-13-700(B) are followed.