

SUBJECT: PUBLIC EMPLOYEES AS EXPERT WITNESSES

SUMMARY:

Section 8-13-740(A)(6) prohibits representation of clients, not appearances as an expert witness. There does not appear to be any prohibition against faculty members appearing as expert witnesses when such appearances are on the faculty members own time. Faculty members would not be prohibited from accepting expert witness fees for providing expert testimony at a rate or price fixing matter.

QUESTION:

The Assistant General Counsel for South Carolina Electric and Gas Company has indicated that the company will be appearing before the SC Public Service Commission in contested case hearings related to rate and price fixing matters. Typically, expert testimony is provided utilizing local experts whenever possible. He questions whether Section 8-13-740(A)(6) allows the Company to hire paid faculty members from USC for this purpose.

DISCUSSION:

This opinion is rendered in response to a letter dated October 15, 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 8-13-740(a)(6) provides:

(6) A public employee, other than those specified in items (4) and (5) of this subsection, receiving compensation other than reimbursement or per diem payments for his official duties, an individual with whom he is associated, or a business with which he is associated may not knowingly represent a person before an entity on the same level of government except:

(a) as required by law;

(b) before a court under the unified judicial system; or

(c) in a contested case, as defined in Section 1-23-310, excluding a contested case for a rate or price fixing matter before the South Carolina Public Service Commission or South Carolina Insurance Commission, or in an agency's consideration of the drafting and promulgation of regulations under Chapter 23 of Title 1 in a public hearing.

Represent is defined in Section 8-13-100(28) as:

(28) 'Represent' or 'representation' means making an appearance, whether gratuitous

or for compensation, before a state agency, office, department, division, bureau, board, commission, or council, including the General Assembly, or before a local or regional government office, department, division, bureau, board, or commission.

Although the term "expert witness" is not defined in the Ethics Reform Act, other sources have identified an expert witness as, " ...a witness [who] by reason of study or experience or both [possesses] such knowledge or skill in a business, profession, or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony." Campbell v. Paschal, 290 S.C. 1, 347 S.E.2d 892 (Ct. App. 1986). The State Ethics Commission advises that Section 8-13-740(A)(6) prohibits the representation of clients, not appearances as an expert witness. Accordingly, there does not appear to be any prohibition against faculty members appearing as expert witnesses when such appearances are on the faculty members own time.

The State Ethics Commission also calls attention to Section 8-13-705(E) which provides:

Subsections (C) and (D) of this section do not prohibit the payment or receipt of witness fees provided by law or the payment by the party on whose behalf a witness is called and receipt by a witness of the reasonable costs of travel and subsistence at trial, hearing, or proceeding, or, in the case of an expert witness, of the reasonable fee for time spent in the preparation of the opinion and in appearing or testifying.

Thus, faculty members would not be prohibited from accepting expert witness fees for providing expert testimony at a rate or price fixing matter.