

SUBJECT: POST-EMPLOYMENT OF PUBLIC EMPLOYEE

SUMMARY:

An employee for a public agency would not be prohibited from accepting employment with a firm with which he has had limited involvement. However, for a period of twelve months after leaving public service, the employee may neither lobby the agency nor represent clients before the agency on matters in which he personally and substantially participated. Moreover, any subsequent employment with the firm cannot involve a contract which the employee either awarded or supervised.

QUESTION:

An employee of a non-regulatory agency requests a confidential advisory opinion addressing the ethical implications of his leaving government service and accepting a position with a firm with which he has had limited involvement during his public employment. To date, the employee has neither requested a position, nor has a position been offered. The employee provides technical oversight of certain functions of the agency. Based on prior experience in contract administration and procurement of specialized services, the employee serves as the agency's resident resource person in these areas; however, neither of these areas is a component of his position description.

In early 1991, the agency received a grant from another public agency to conduct a demonstration program. The agency issued an Invitation for Professional Services. Due to his previous experience as well as his current position, the employee was asked to chair a selection committee. Firms which submitted resumes were ranked subjectively and independently by the committee members based on standard evaluation criteria. The selected firm was awarded a contract which was subsequently approved in 1991. The approved contract required the firm to submit invoices to the agency every thirty days for services rendered up to the date of the invoice. Due to his technical involvement with the project, the employee was required by the agency's administrative section to certify the invoices submitted for payment. Since the employee never reviewed time sheets or other supporting documentation for the invoices, he was unable to certify the invoices completely and annotated the invoices accordingly. The original contract completion date was September 30, 1992, but it was later extended to April 1, 1993. As previously stated, the employee now inquires under what conditions he may accept employment with the selected firm.

DISCUSSION:

This opinion is rendered in response to a letter dated March 9, 1993 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 calls attention to Section 8-13-755, which 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 applies to 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 or representing clients before the former 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.

Based on the facts submitted, it does not appear that the selected firm would offer the employee a position which entails either lobbying his former agency or representing clients before that agency. Accordingly, the restrictions contained in Section 8-13-755(1) do not seem to apply. In addition, the state agency for whom the employee works does not appear to regulate; therefore, the restrictions contained in Section 8-13-755(2) do not seem to apply. For these reasons, the State Ethics Commission advises that Section 8-13-755 would not prohibit the employee from accepting employment with the selected firm. However, for a period of twelve months after leaving public service, the employee may neither lobby the agency nor represent clients before that agency on matters in which he personally and substantially participated. Additionally, the Commission calls attention to Section 8-13-760, which provides:

Except as permitted by regulations of the State Ethics Commission, it is a breach of ethical standards for a public official, public member, or public employee who is

---

participating directly in procurement, as defined in Section 11-35-310(22), to resign and accept employment with a person contracting with the governmental body if the contract falls or would fall under the public official's, public member's, or public employee's official responsibilities.

Section 11-35-310(22) provides as follows:

"Procurement" means buying, purchasing, renting, leasing or otherwise acquiring any supplies, services or construction. It also includes all functions that pertain to the obtaining of any supply, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

Section 8-13-100(23) provides as follows:

"Official responsibility" means the direct administrative or operating authority, whether intermediate or final and whether exercisable personally or through subordinates, to approve, disapprove, or otherwise direct government action.

In Advisory Opinion 92-101, the State Ethics Commission advised that the restriction contained in Section 8-13-760 would prohibit a former state employee from obtaining employment for one year from a contractor on contracts for which he was responsible for letting or supervising. Accordingly, the Commission believes that the employee's service on the selection committee would have precluded him from resigning his state position and accepting employment with the engineering firm to provide services under the contract. However, since this contract was completed more than one year after the award of the contract, the Commission advises that the employee may accept a position with the selected firm, provided such employment does not involve a contract which the employee either awarded or supervised.