

SUBJECT: PUBLIC EMPLOYEE'S SELECTION OF CONTRACTOR TO CONSTRUCT PRIVATE RESIDENCE

SUMMARY:

The Ethics Reform Act does not prohibit a city employee who supervises third party contractor work from selecting a contractor who regularly performs services for the city to construct a private home unless the contractor's selection influences the employee's official actions.

QUESTION:

The Spartanburg City Attorney requests an advisory opinion regarding the following situation. A city employee is currently in the process of selecting a contractor to construct a private residence. The employee's position requires him to supervise and approve work performed by third party contractors. The third party contractors' work is assigned based upon the bid process, and the employee does not determine the successful bidder. One of the contractors that regularly does contract work for the City would like to be considered for the employee's private work, and the employee would like to use this contractor. The City Attorney questions whether the appearance of impropriety and the potential for abuse would prohibit the employee from selecting this particular contractor.

DISCUSSION:

This opinion is rendered in response to a letter dated March 18, 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 the provisions of Section 8-13-705 provides in part as follows:

- (A) A person may not, directly or indirectly, give, offer, or promise anything of value to a public official, public member, or public employee with the intent to:
- (1) influence the discharge of a public official's, public member's, or public employee's official responsibilities;
  - (2) influence a public official, public member, or public employee to commit, aid in committing, collude in, or allow fraud on a governmental entity; or,
  - (3) induce a public official, public member, or public employee to perform or fail to perform an act in violation of the public official's, public member's, or public employee's official responsibilities.

(B) A public official, public member, or public employee may not, directly or indirectly, knowingly ask, demand, exact, solicit, seek, accept, assign, receive, or agree to receive anything of value for himself or for another person in return for being:

- (1) influenced in the discharge of his official responsibilities;
- (2) influenced to commit, aid in committing, collude in, allow fraud, or make an opportunity for the commission of fraud on a governmental entity; or
- (3) induced to perform or fail to perform an act in violation of his official responsibilities.

Although the State Ethics Commission understands the concerns raised in the request letter, nothing in the facts submitted suggests that the employee has either been offered or accepted anything of value from the contractor in return for being influenced somehow in the discharge of his official responsibilities. Thus, while some may view the employee's selection of this particular contractor as improper, the Commission does not believe that the Ethics Reform Act prohibits mere appearances of impropriety. Therefore, absent the intent to influence the employee's official actions, the Commission advises that the Ethics Reform Act does not prohibit the employee from selecting the contractor who regularly does contract work for the city to construct a private residence.