

SUBJECT: PUBLIC AGENCY CONTRACTING WITH COMPANY THAT EMPLOYS THE SPOUSE OF AN AGENCY EMPLOYEE. STATE TECHNICAL COLLEGE INSTRUCTOR AUTHORIZING TEXTBOOK INTENDED FOR USE IN THE COURSE HE TEACHES.

SUMMARY:

A public agency may contract with a company that employs the spouse of an agency employee; however, the public employee is prohibited from taking action or making decisions affecting the economic interests of the spouse's company. A technical college instructor would not be prohibited from authoring textbooks consistent with the off-duty employment guidelines; however, if the instructor intends to use his book as the text in the course he teaches, the instructor is advised to comply with the provisions of Section 8-13-700(A) and (B) regarding the selection and final approval of the textbook.

QUESTION:

The Vice President of Business Affairs for Florence-Darlington Technical College requests an advisory opinion concerning two situations involving the Ethics Reform Act.

DISCUSSION:

This opinion is rendered in response to a letter dated April 2, 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.

**1. A Department Coordinator has issued a purchase request for an executive chair to be purchased for her use at the college. The coordinator has listed her spouse's company as the preferred vendor. The company in question could sell the chair to the college on state contract, and the coordinator's spouse would discount the price the chair by \$50.**

Section 8-13-700(A) provides as follows:

(A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use which does not result in additional public expense.

Section 8-13-100(18)(b) states, "'Immediate family' means ...a spouse of a candidate, public official, public member, or public employee". Section 8-13-100(4) provides, "'Business with which he is associated' means a business of which the person or a member of his immediate family is a director, an officer, owner, employee, [or] a compensated agent...." Accordingly, the State Ethics Commission advises that the furniture company which employs the Department Coordinator's spouse is a business with which the coordinator is associated. Therefore, the State Ethics Commission must call attention to the requirements of Section 8-13-700(B) which 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;

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(3) if he is a public employee, he shall furnish a copy of the statement to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he shall take the action prescribed by the State Ethics Commission.

In an earlier advisory opinion, SEC AO93-014, the State Ethics Commission concluded that the Emergency Preparedness Division of the Adjutant General's Office was not prohibited from contracting with the hotel which employed the Deputy Director's spouse; however, the Deputy Director could not participate in agency actions or decisions which would affect the economic interests of his spouse's employer. In the present situation, the Commission similarly advises that Florence-Darlington Technical College would not be prohibited from contracting with the company which employs the spouse of the Department Coordinator. Nevertheless, in accordance with Section 8-13-700(B), the coordinator is prohibited from taking action or making decisions affecting the economic interests of her spouse's company.

**2. One of the college instructors has written and published a book which he requests as the textbook to be purchased by students in the course he teaches. In this situation, our bookstore**

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**would purchase the book and sell directly to the students with normal profit retained by the college.**

In prior advisory opinions, the State Ethics Commission has advised that a public employee may engage in outside employment consistent with the following established guidelines: (1) that no public materials or equipment are utilized, except as provided by Section 8-13-700(A), (2) such work is engaged in on the employee's own time, (3) the work does not interfere with the needs of the agency, and (4) the public position is not utilized to obtain or continue the employment.

Accordingly, the State Ethics Commission advises that the authorship of a textbook would not be prohibited by the Ethics Reform Act. However, if the instructor intends to use his book as the text in the course he teaches, the instructor is advised to comply with the provisions of Section 8-13-700(A) and (B) regarding the adoption of the textbook. In other words, if the instructor desires to use his book as the course text, either his department head or some other competent authority should make the final approval determination.