

SUBJECT: POST-EMPLOYMENT OF PUBLIC EMPLOYEE

SUMMARY:

A former public employee may seek future professional consulting service contracts with his previous employer, provided that such work does not involve a contract which the employee was responsible for administering. 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.

QUESTION:

A former public employee requests an advisory opinion addressing the conditions under which he may solicit his previous employer for future professional consulting service contracts which will be advertised as Requests for Proposals. From June of 1990 through December of 1992, the former employee served as the Assistant Director of Planning and Development for the Charleston County Park and Recreation Commission (CCPRC). In this position, the employee answered directly to the Division Director for Planning and Development, and his responsibilities included park planning and design, employee management, construction administration, budget administration and contract administration for contractors and consultants. However, the employee did not have the authority to approve and award contracts.

In September of 1992, the employee informed his superior that he would be leaving at the end of the year to pursue full time private consulting work. Also in September of 1992, the employee incorporated a new firm, Land Planning & Design, Inc. (LPD), to provide consulting services in the areas of landscape architecture, land planning and wetland consulting. The new firm included two partners from a local engineering firm. To date, LPD has not provided services to the Charleston County Park and Recreation Commission, and the former employee is only interested in pursuing future work which has not been contracted yet. The former employee's partners have done work for CCPRC in the past through their own firms; however, LPD is a completely separate organization and the former employee receives no compensation from his partners' other business operations.

DISCUSSION:

This opinion is rendered in response to a letter dated May 3, 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 former employee will either be lobbying the Charleston County Park and Recreation Commission or representing clients before that agency. Accordingly, the restrictions contained in Section 8-13-755(1) do not seem to apply. In addition, the Charleston County Park and Recreation Commission 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 former employee from soliciting CCPRC for future professional consulting service contracts. 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 previous responsibilities would have precluded him from resigning his public position and accepting employment with a consulting firm to provide services under a contract which he had administered. However, since the former employee is only interested in future contracts, the Commission advises that LPD may solicit professional consulting service contracts from the Charleston County Park and Recreation Commission, provided that such work does not involve a contract for which the employee had official responsibility.