

SEC AO2000-002

September 15, 1999

SUBJECT: A CITY TRAFFIC ENGINEER SEEKING EMPLOYMENT WITH A PRIVATE ENGINEERING FIRM AFTER DIRECTLY PARTICIPATING IN A PROCUREMENT MATTER THE CITY AND THE FIRM.

SUMMARY: The City Traffic Engineer is advised that he may accept employment with the engineering firm: however, the engineer, upon leaving government employment, may not participate in the contract between the engineering firm and the City in which the engineer had direct procurement responsibilities as a city employee.

QUESTION: A City Traffic Engineer asks whether he can accept employment with an engineering firm that he has worked with on various projects throughout the city. This work relationship has included the engineer selecting the firm to conduct a survey and conceptual design for an ongoing road project in the city.

DISCUSSION:

The State Ethics 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 2-17-5 et seq. and Section 8-13-100 et seq., as amended, 1976 Code of Laws of South Carolina). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. Failure to disclose relevant information may void the opinion.

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 or department 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 public employee directly and substantially participated.

Based on the facts submitted, it does not appear that the engineering firm would offer the engineer a position which entails either lobbying his former department or presenting clients before that department. Accordingly, the restrictions contained in Section 8-3-755(1) do not seem to apply. In addition, the traffic Engineering Division for whom the engineer 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.

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.

CONCLUSION:

Accordingly, the Commission believes that the engineer's direct participation in the procurement of the engineering firm's services for the ongoing road project would preclude him from resigning his city position and accepting employment with the engineering firm to provide services under the contract he procured for the city. The engineer may accept employment with the engineering firm, but he is prohibited as a private employee from providing services under the contract that he procured as a city employee. This prohibition has no arbitrary expiration date; therefore, the engineer may never provide services under this specific contract.