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5000 THURMOND MALL, SUITE 250
COLUMBIA, S.C. 29201

HERBERT R. HAYDEN, JR.
EXECUTIVE DIRECTOR

SEC AO2000-06

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SUBJECT: PROPER PROCEDURE FOR A RESPONDENT TO WAIVE CONFIDENTIALITY OF A COMPLAINT FILED WITH THE STATE ETHICS COMMISSION.

SUMMARY: In order to properly waive confidentiality the Respondent must forward written notice of his waiver to the State Ethics Commission prior to commenting.

QUESTION: As a result of a complaint alleging a violation of confidentiality, the State Ethics Commission has requested an Advisory Opinion to provide guidelines to Respondents on the proper procedure for the waiver of confidentiality.

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 8-13-320(10)(b), which provides the Commission has these duties and powers to conduct its investigations, inquiries, and hearings:

(b) If the commission or its executive director determines that the complaint does not allege facts sufficient to constitute a violation, the commission shall dismiss the complaint and notify the complainant and respondent, and the entire matter must be stricken from public record unless

the respondent, by written authorization, waives the confidentiality of the existence of the complaint and authorizes the release of information about the disposition of the complaint.

Clearly the confidentiality provisions are in place to protect the Respondent; however, when the Respondent waives such confidentiality without written notice, the Commission and the Complainant are prevented in commenting on the complaint. More specifically the Commission could not properly provide information to the public upon request. It has been the Commission's policy, since the passage of the Ethics Reform Act, to confirm receipt of the Respondent's written notice and advise the Complainant, in writing, of the waiver.

CONCLUSION:

Accordingly, the Commission directs those Respondents who wish to waive confidentiality, pursuant to Section 8-13-320(10)(b), to provide written notice of such waiver to the State Ethics Commission prior to commenting. Failure to provide written notice of waiver of confidentiality may result in a complaint matter.

KEY WORDS: waiver of confidentiality

ANNOTATIONS: 8-13-320(10)(b)