

SEC AO2001-003

September 20, 2000

**SUBJECT:** A TEMPORARY PART-TIME INSPECTOR FOR THE SOUTH CAROLINA BOARD OF PHARMACY SEEKS EMPLOYMENT WITH A PRIVATE PHARMACY.

**SUMMARY:** A temporary part-time inspector for the Board of Pharmacy may engage in off-duty employment with a private pharmacy, as long as he adheres to the off-duty employment guidelines, recusal provisions and financial disclosure requirements of the Act.

**QUESTION:** May a temporary part-time inspector for the Board of Pharmacy engage in off-duty employment with a private pharmacy as a “pharmacist-in-charge”?

**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.

In prior opinions, the State Ethics Commission has advised that a public employee may engage in outside employment consistent with 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. See AO92-066, AO92-093, AO92-202 and AO92-206.

The State Ethics Commission cites Section 8-13-700(A), which provides:  
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.

Due to the regulatory nature of the Board of Pharmacy, the Board must implement internal restrictions to ensure that the part-time inspector and pharmacist-in-charge is not in violation of Section 8-13-700(A) by inspecting his own facility. If those restrictions are not in place then the inspector/pharmacist-in-charge must recuse himself from the inspection process pursuant to Section 8-13-700(B)(1) and (3), which provides:

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;

Finally, the Commission cites Section 8-13-730, which provides:  
Unless otherwise provided by law, no person may serve as a

member of a governmental regulatory agency that regulates any business with which that person is associated. An employee of the regulatory agency which regulates a business with which he is associated annually shall file a statement of economic interests notwithstanding the provisions of Section 8-13-1110. No person may be an employee of the regulatory agency which regulates a business with which he is associated if this relationship creates a continuing or frequent conflict with the performance of his official responsibilities.

As Section 8-13-730 notes, the dual relationship between employment by a regulatory agency and association with a business being regulated by the agency may create an ongoing conflict that compromises the performance of the part-time inspector's official responsibilities. If that occurs then the part-time inspector must make a choice between his public employment and his off-duty employment. Additionally, Section 8-13-730 requires that a pharmacist file a Statement of Economic Interest each year that he performs inspections of facilities and is employed by a facility.

CONCLUSION: Accordingly, the Commission opines that the Board of Pharmacy part-time inspector may engage in off-duty employment as a pharmacist-in-charge as long as he adheres to the guidelines for off-duty employment and the provisions of recusal and financial disclosure set forth in Sections 8-13-700(B) and 8-13-730. The same provisions for off-duty employment are applicable whether the temporary, part-time inspector is a pharmacist or a pharmacist-in-charge.

KEY WORDS:	off-duty employment
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ANNOTATIONS:	8-13-700(A) and (B), 8-13-730
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