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SEC AO2002-010

March 20, 2002

SUBJECT: CONFIDENTIALITY OF INVESTIGATIONS, INQUIRIES AND HEARINGS.

SUMMARY: All letters, written inquiries, and other correspondence sent to the State Ethics Commission requesting an investigation of or inquiry into potential violations of the Ethics Reform Act are confidential and may not be made public.

QUESTION: The State Ethics Commission has requested an Advisory Opinion to provide guidelines to the public as to when confidentiality attaches to correspondence requesting an investigation or inquiry into an alleged violation of the Ethics Reform Act.

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)(a),(b),(d) and (g), which provides the Commission has these duties and powers to conduct its investigations, inquiries, and hearings:

- (a) The commission shall accept from an individual, whether personally or on behalf of an organization or governmental body, a verified complaint, in writing, that states the name of a person alleged to have committed a violation of this chapter and the particulars of the violation. The commission shall forward a copy of the

and a statement explaining the due process rights of the respondent including, but not limited to, the right to counsel to the respondent within ten days of the filing of the complaint.

(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.

(d) If the commission, upon the receipt of any information, finds probable cause to believe that a violation of the chapter has occurred, it may, upon its own motion and an affirmative vote of the majority of the total membership of the commission, file a verified complaint, in writing, that states the name of the person alleged to have committed a violation of this chapter and the particulars of the violation. The commission shall forward a copy of the complaint, a general statement of the applicable law with respect to the complaint, and a statement explaining the due process rights of the respondent including, but not limited to, the right to counsel to the respondent within ten days of the filing of the complaint.

(g) All investigations, inquiries, hearings, and accompanying documents must remain confidential until final disposition of a matter unless the respondent waives the right to confidentiality. The wilful release of confidential information is a misdemeanor, and any person releasing such confidential information, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year.

It is abundantly clear that all "complaints" filed with the Commission pursuant to Section 8-13-320 (10)(a) are confidential, and a notice of such confidentiality is provided on the Commission's Complaint Form. Also, as provided in Section 8-13-320 (10)(d) the State Ethics Commission accepts "information" from citizens pertaining to alleged violations of the Ethics Reform Act. If such information is sufficient, the Commission may initiate a complaint and an investigation of the allegations.

With respect to such information, it is less clear when the confidentiality provisions attach. Obviously, the complaint filed by the Commission and all subsequent investigations, documents and hearings are confidential; however, the confidentiality of the original correspondence providing information to the Commission is not specifically addressed by the statute.

Clearly, the confidentiality provisions are in place to protect the Respondent. The lack of statutory language specifically addressing the citizen's correspondence should not subject the

Respondent to a public acknowledgment of an alleged violation. Although the Commission is concerned about potential constitutional issues, freedom of speech and press and due process absent the receipt of a verified complaint, the Commission believes the confidentiality of the process is preeminent.

CONCLUSION:

Accordingly, the Commission directs those individuals who correspond with the State Ethics Commission to request an investigation or inquiry into an alleged violation of the Ethics Reform Act that the confidentiality provisions of Section 8-13-320(10)(g) attach upon receipt of the letter by the State Ethics Commission. The wilful release of confidential information may result in a complaint matter.

KEY WORDS: verified complaint, confidentiality

ANNOTATIONS: 8-13-320(10)(a) and 8-13-320(10)(g)
