

**State Ethics Commission  
5000 Thurmond Mall, Suite 250  
Columbia, South Carolina 29201**

SEC AO2007-001

September 13, 2006

SUBJECT: OFF-DUTY EMPLOYMENT

SUMMARY: An employee of the Budget and Control Board, who is also a professional engineer, is advised that he may start his own engineering consultation business while off-duty; however, he must adhere to the off-duty guidelines and other sections of the Ethics Reform Act. The employee may represent a client before other state agencies as long as he adheres to the off-duty employment guidelines.

QUESTION: An employee of the Budget and Control Board asks whether he may start his own engineering consultation business and remain employed in his present position. The employee also asks whether he can represent a client before other state agencies.

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 advisory 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.

In addition to the off-duty guidelines, the State Ethics Commission calls attention to Section 8-13-700(B). If the Budget and Control Board employee is required to take an

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official action as a public employee which will affect the economic interests of an engineering firm with whom he was contracting to provide services, then he must follow the recusal procedures of Section 8-13-700(B), which provides:

(B) 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;

Further, the Commission calls attention to Section 8-13-720, which provides:

No person may offer or pay to a public official, public member, or public employee and no public official, public member, or public employee may solicit or receive money in addition to that received by the public official, public member, or public employee in his official capacity for advice or assistance given in the course of his employment as a public official, public member, or public employee.

Finally, the Commission calls attention to Section 8-13-725, which provides

No public official, public member, or public employee may use or disclose confidential information gained in the course of or by reason of his official responsibilities in any way that would

affect an economic interest held by himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated.

A public employee must not receive additional compensation from his off-duty employment, if he is being paid to provide those services through his public employment. Finally, a public employee must not use or disclose confidential information he gains in his public employment to affect the economic interest of himself, an immediate family member, an individual with which he is associated, or a business with which he is associated.

Provided such work is done consistent with the off-duty guidelines and discussed sections of the Ethics Reform Act, the Commission knows of no reason why the Budget and Control Board employee could not start his own engineering firm. The employee has asserted that he will neither solicit nor accept any work that is funded by his office within the Budget and Control Board thus eliminating many potential conflicts.

Finally, the employee asks whether he may represent clients before other state agencies. Section 8-13-740(A)(6) provides:

(6) A public employee, other than those specified in items (4) and (5) of this subsection, receiving compensation other than reimbursement or per diem payments for his official duties, an individual with whom he is associated, or a business with which he is associated may not knowingly represent a person before an entity on the same level of government for which the public official, public member, or public employee has official responsibility except:

(a) as required by law;

(b) before a court under the unified judicial system; or

(c) in a contested case, as defined in Section 1-23-310, excluding a contested case for a rate or price fixing matter before the South Carolina Public Service Commission or the South Carolina Department of Insurance, or in an agency's consideration of the drafting and promulgation of regulations under Chapter 23 of Title 1 in a public hearing.

A public employee of the Budget and Control Board cannot represent clients before an agency for which he has official responsibility. It would be unlikely that an employee of

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the Budget and Control Board would have official responsibility for any other state agency.

CONCLUSION:

Accordingly, the Commission believes that the Budget and Control Board employee may start his own engineering consultation business, as long as he adheres to the off-duty guidelines, the recusal provisions of Section 8-13-700(B), dual payment prohibitions of Section 8-13-720 and the confidentiality provisions of Section 8-13-725. The employee may represent a client before other state agencies, as long as he adheres to the off-duty employment guidelines and has no official responsibility for the agency.

KEY WORDS:      off-duty employment
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ANNOTATIONS:    Section 8-13-700(B), 720, 725, and 740(A)(6)
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