

SEC AO2008-006

March 19, 2008

SUBJECT: OFF-DUTY EMPLOYMENT OF PUBLIC OFFICIAL

SUMMARY: The proposed off-duty employment to be considered by a potential candidate for county coroner would be prohibited under the Ethics Reform Act. Section 8-13-700(B) prohibits a public official to take an official action that would affect the economic interest of a business with he is associated.

QUESTION: Does my employment as a forensic pathologist doing autopsies for the medical examiner's office prohibit my concurrent holding of the office of coroner?

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.

Section 8-13-700(B) provides in part as follows:

(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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(4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of any agency, commission, board, or of any county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes;

Economic interest is defined in Section 8-13-100(11) as:

(a) ...an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.

(b) This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee is incidental to the public official's, public member's, or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

Business with which he is associated is defined in Section 8-13-100(4) as:

a business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and

which constitutes five percent or more of the total outstanding stock of any class.

Individual with whom he is associated is defined in Section 8-13-100(21) as:

an individual with whom the person or a member of his immediate family mutually has an interest in any business of which the person or a member of his immediate family is a director, officer, owner, employee, compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

A public official is prohibited by Section 8-13-700(B) from participating in any action 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. Clearly, Pathology Associates of Greenville is a business with which the potential candidate for coroner is associated and his fellow employees at the practice are individuals with whom he is associated.

A public official is required to follow the procedures of Section 8-13-700(B)(1) and (4) if an issue before him would affect the economic interests of his off-duty employer, i.e. requesting autopsies be performed by Pathology Associates of Greenville. Section 8-13-700(B) does not require that the public official have an economic interest in the matter in order for a conflict to be present. Clearly, Pathology Associates of Greenville has an economic interest in performing autopsies at the request of the coroner's office.

CONCLUSION: A coroner may not order autopsies to be performed by a business with which he is associated due to his off-duty employment with the business. The proposed off-duty employment to be considered by a potential candidate for county coroner would be prohibited under the Ethics Reform Act. Section 8-13-700(B) prohibits a public official to take an official action that would affect the economic interest of a business with he is associated.

KEY WORDS: off-duty employment, recusal, economic interest

ANNOTATIONS: 8-13-700(B), 8-13-100(4)
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