

SUBJECT: OFF-DUTY EMPLOYMENT OF AGENCY DIRECTOR**SUMMARY:**

The Director of the Environmental Certification Board is not prohibited from engaging in off-duty employment in the voluntary licensing of water distribution and wastewater collection personnel since his agency does not regulate the voluntary licensees.

QUESTION:

The Director of the Environmental Certification Board requests an opinion concerning potential off-duty employment. The Board is responsible for certifying individuals who work in water and wastewater treatment facilities, both industrial and municipal. Certification involves passing an examination and verification of experience. The Board's Director has proposed contracting with two professional associations to develop and manage a voluntary certification program for water distribution and wastewater collection personnel. The Director would perform the work on off-duty time and would not utilize Board resources. Licensees under the voluntary program will be personnel working in water distribution or wastewater collection as opposed to water and wastewater treatment personnel. The voluntary program will be similar to that administered by the mandatory program, however, the number of certificates will be considerably less than that of the mandatory program.

DISCUSSION:

This opinion is rendered in response to a letter dated March 2, 1992 requesting an opinion from the State Ethics Commission. The 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 8-13-100 et. seq., as amended, 1976 Code of Laws). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation.

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

(A) 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.

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.

The State Ethics Commission calls attention to the provisions of Section 8-13-730 which provides in part as follows:

...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.

The State Ethics Commission advises that the Ethics Reform Act does not specifically prohibit such off-duty employment.