

SUBJECT: DEPUTY CORONER CONTRACTING TO PROVIDE TRANSPORTATION SERVICE

SUMMARY:

A Deputy Coroner would not be prohibited from contracting with the Coroner's Office to provide transportation for deceased bodies since he is not authorized to perform an official function regarding such contract. However, the Deputy Coroner is advised not to utilize his official position to obtain an economic interest with respect to the transportation of deceased bodies. Therefore, in accordance with Section 8-13-700(B), the Deputy Coroner should abstain from participating in any official action or decision which affects either the contract or his economic interests therein.

QUESTION:

The County Attorney for Berkeley County requests an advisory opinion concerning the utilization of a private enterprise to transport deceased bodies. That enterprise has requested an increase in the rate it receives for such transportation. This service was originally established through the county procurement procedure when competitive bids were sought. The Coroner now relies on a sole provider due to efficiency, timeliness, and availability of the service. The Coroner is in agreement to grant the increase. The service provider is a duly appointed deputy coroner but does not take part in deliberations or decisions regarding the award of the transportation contract. The County Attorney questions whether this presents a conflict of interests and whether there are any other concerns regarding this arrangement.

DISCUSSION:

This opinion is rendered in response to a letter dated September 8, 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.

The State Ethics Commission has previously advised that a public official may contract with a public agency, including his own, as long as he took no official action regarding the contract in accordance Section 8-13-700(B), which provides that a public official is required to provide a written statement describing the conflict of interest and then must not participate in any matter affecting his economic interests of \$50 or more. 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 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...

Accordingly, the Deputy Coroner must abstain from participating in any governmental action or decision which affects either the contract or his economic interests therein. For example, it appears that the Deputy Coroner could sometimes be in a position to make a decision regarding the destination of a deceased body which affects his economic interests pursuant to the contract. In these instances, the State Ethics Commission advises the Deputy Coroner not to utilize his official position to obtain an economic interest, and that he allow either the Coroner or some other appropriate official to make that decision.

In addition, the Commission calls attention to Section 8-13-775 which provides:

A public official, public member, or public employee may not have an economic interest in a contract with the State or its political subdivisions if the public official, public member, or public employee is authorized to perform an official function relating to the contract. Official function means writing or preparing the contract specifications, acceptance of bids, award of the contract, or other action on the preparation or award of such contract. This section is not intended to infringe on or prohibit public employment contracts with this State or a political subdivision of this State.

Thus, the Deputy Coroner would be prohibited from contracting with the Coroner's Office if he is authorized to perform an official function regarding the award of such contract, regardless of whether he complied with the requirements of Section 8-13-700(B). Based on the facts submitted,

however, it appears that the Deputy Coroner is not authorized to perform an official function as defined in Section 8-13-775. Therefore, the Deputy Coroner may negotiate and perform the contract as a private contractor, provided that he complies with the recusal procedure of Section 8-13-700(B) on any matter which affects his economic interests.