

SUBJECT: LEGAL EFFECT OF ADVISORY OPINIONS ISSUED BY THE STATE ETHICS COMMISSION

SUMMARY:

Advisory opinions issued by the State Ethics Commission on the requirements of Chapter 13, Title 8, Code of Laws for South Carolina, 1976, as amended, until amended or revoked, are binding on the Commission in any subsequent charges concerning the person who requested the opinion and who acted in reliance on it in good faith, unless material facts were omitted or misstated by the person in the request for the opinion.

QUESTION:

The Legal Counsel for the S.C. Textile Manufacturers Association has requested a series of advisory opinions clarifying the Ethics Reform Act of 1991. By letter dated November 7, 1991, he was advised that only one question could be responded to by the State Ethics Commission. The remaining questions are subject to interpretation by the Secretary of State and the State Election Commission. The Legal Counsel's remaining question is:

What is the legal effect of advisory opinions issued by the State Ethics Commission and what protections extend to parties reasonably relying thereon?

DISCUSSION:

This opinion is rendered in response to a letter dated November 5, 1991, requesting an opinion from the State Ethics Commission. The Commission's jurisdiction is limited to the applicability of the State Ethics Act (Act No. 248 of 1991; Section 8-13-100 et. seq., 1976 Code of Laws). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation.

Section 8-13-320, Code of Laws for South Carolina, 1976, provides for the duties and powers of the State Ethics Commission.

Section 8-13-320(11) provides as follows:

To issue, upon request from persons covered by this chapter, and publish advisory opinions on the requirements of this chapter, based on real or hypothetical sets of circumstances; provided, that an opinion rendered by the commission, until amended or revoked, is binding on the commission in any subsequent charges concerning the person who requested the opinion and who acted in reliance on it in good faith unless material facts were omitted or misstated by the person in the request for the opinion. Advisory opinions must be in writing and are considered rendered when approved by five or more commission members subscribing to the advisory opinion. Advisory opinions must be made available to the public

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unless the commission, by majority vote of the total membership of the commission, requires an opinion to remain confidential. However, the identities of the parties involved must be withheld upon request;