

SUBJECT: EDUCATION DEPARTMENT EMPLOYEE CONSULTING

SUMMARY:

An Education Department employee is not prohibited from continuing a consulting arrangement contracted prior to his employment provided it is consistent with the off-duty employment guidelines. The Secretary of State's office should be contacted concerning lobbyist issues.

QUESTION:

The Director of the Office of Transportation of the Department of Education was engaged as a private transit consultant with South Carolina Electric and Gas regarding public transit service in Columbia and Charleston. Some limited work from that contract remains to be accomplished including editing of materials, advisory support to the SCE&G staff, and presentation of materials to local officials, citizen groups, and the Public Service Commission. He will also provide expert testimony regarding rate increases at a Public Service Commission hearing. He questions whether there is any restriction regarding this activity as a result of the Ethics Reform Act.

DISCUSSION:

This opinion is rendered in response to a letter dated December 12, 1991 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.

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. Provided such work is done consistent with those guidelines, the Commission knows of no reason why the Director could not continue with the completion of the consulting work.

The State Ethics Commission notes that Section 8-13-710(A) requires disclosure of anything of value received from a lobbyist's principal. Section 8-13-710(A) provides:

(A) Unless provided by subsection (B) and in addition to the requirements of Chapter 17 of Title 2, a public official or public employee required to file a statement of economic interests under Section 8-13-1110 who accepts anything of value from a lobbyist's principal must report the value of anything received on his statement of economic interests

pursuant to Section 8-13-1120(A)(9).

Section 8-13-1120(A)(9) provides:

(A) A statement of economic interests filed pursuant to Section 8-13-1110 must be on forms prescribed by the State Ethics Commission and must contain full and complete information concerning:

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(9) the source and a brief description of any and all gifts, including transportation, lodging, food, or entertainment received during the preceding calendar year from:

(a) a person, if there is reason to believe the donor would not give the gift, gratuity, or favor but for the official's or employee's office or position; or

(b) a person, or from an officer or director of a person, if the public official or public employee has reason to believe the person:

(i) has or is seeking to obtain contractual or other business or financial relationship with the official's or employee's agency; or

(ii) conducts operations or activities which are regulated by the official's or employee's agency if the value of the gift is twenty-five dollars or more in a day or if the value totals, in the aggregate, two hundred dollars or more in a calendar year.

The State Ethics Commission calls attention to the provisions of Section 2-17-110(G) which prohibits a public employee being employed on a retainer by a lobbyist or lobbyist principal. The Secretary of State's Office should be contacted concerning the applicability of that code section.