

SUBJECT: DISCLOSURE OF CONSULTING WORK ON STATEMENT OF ECONOMIC INTERESTS

SUMMARY:

A local official employed by a consulting firm is required to disclose on the Statement of Economic Interest, information regarding any contractual arrangements with his agency as well as information regarding in-state contracts awarded to him as a consultant. Activity involving out-of-state consulting would not be required to be reported.

QUESTION:

A local elected official has requested a confidential advisory opinion on the following situation:

(1) I am employed by a private firm in which I perform consulting work. This is secondary employment that is aside from my primary public responsibility. I do all the consulting as an employee for the private firm and not in my official capacity. Such consulting is also done with local governments; however, none is done with the local governments with which I am associated and the vast majority is done outside of South Carolina. My income from the consulting work comes from the firm and not from the local governments to which I referred. I am in no way involved with contracting with these local governments.

The contracts are actually executed between the firm and an association who represents the local governments.

(2) My question is this: Based on the foregoing facts, must I as an elected official disclose on my statement of economic interest the income received from my consulting work with the private firm? Also, would it make a difference if all of the consulting work was done out-of-state?

DISCUSSION:

This opinion is rendered in response to a letter dated December 23, 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.

Section 8-13-1120 does not generally require disclosure of income received for outside employment activities. The State Ethics Commission does, however, note the provisions of Section 8-13-1120(8) which provides:

if a public official, public member, or public employee receives compensation from an

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individual or business which contracts with the governmental entity with which the public official, public member, or public employee, serves or is employed, the public official, public member, or public employee must report the name and address of that individual or business and the amount of compensation paid to the public official, public member, or public employee by that individual or business;

Thus, if the consulting firm contracts with the official's agency, the official is required to disclose information concerning his relationship with that firm and his compensation from that firm.

The Commission also calls attention to the provisions of Section 8-13-1150 which provides that a consultant is required to file a Statement of Economic Interests.

Consultant is defined in Section 8-13-100(8) as:

"Consultant" means a person, other than a public official, public member, or public employee who contracts with the State, county, municipality, or a political subdivision thereof to:

- (a) evaluate bids for public contracts, or
- (b) award public contracts.

A consultant who is required to file the Statement of Economic Interests shall disclose that information as provided in Section 8-13-1150 which states:

A consultant must file a statement of economic interests for the previous calendar year with the appropriate supervisory office no later than twenty-one days after entering into contractual relationship with the State or a political subdivision of the State and must file an update within ten days from the date the consultant knows or should have known the new economic interests in an entity have arisen in which the consultant or a member of the consultant's immediate family has economic interests:

- (1) where the entity's bid was evaluated by the consultant and who was subsequently awarded the contract by the State, county, municipality, or a political subdivision of any of these entities that contracted with the consultant; or
- (2) where the entity was awarded a contract by the consultant.

Out-of-state consulting activities would not be required to be reported on the Statement of Economic Interests.