

SUBJECT: SCHOOL TRUSTEE'S SPOUSE DOING PRINTING FOR SCHOOL ORGANIZATIONS

SUMMARY:

The spouse of a school trustee may bid on and perform printing contracts with school organizations and booster clubs since the trustees are not authorized to take official action regarding such contracts and provided that the trustee takes no action regarding the contract in accordance with Section 8-13-700(B)

QUESTION:

The Legal Counsel for the School District of Greenville County is requesting an opinion on behalf of a trustee. The trustee's spouse owns and operates a newspaper that prints newspapers for high schools in the district. The individual schools handle the bidding process which is not reviewed by the school board. Funds for this printing are not derived from tax revenues but come from sales of subscriptions and advertisement revenue. The newspaper also prints football programs for high school booster clubs. Funds come from the booster clubs, not the school or school district.

DISCUSSION:

This opinion is rendered in response to a letter dated December 31, 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.

The Ethics Reform Act does not prohibit a public official from contracting with public agencies. In prior advisory opinions, the State Ethics Commission has advised that public officials may contract with their own agencies provided they are not authorized to perform any official function regarding such contract. Section 8-13-775 provides:

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.

From the facts as submitted, it does not appear that the school trustees are authorized to perform any official function regarding such contracts.

The Commission further notes that Section 8-13-700(B) provides:

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 is associated shall:

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;

* * *

(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 reasons for it to be noted in the minutes;

Thus, the Commission knows of no reason why the business of the trustee's spouse could not bid on and participate in printing contracts with the schools or booster clubs. If, however, the trustee is required to take action or make a decision regarding such printing, the provisions of Section 8-13-700(B) must be followed.