

SUBJECT: BUILDING INSPECTOR MOONLIGHTING FOR LOCAL BUILDER

SUMMARY:

A Town Building Inspector would not be prohibited from off-duty employment with a local builder who does no work in the city, provided such work is consistent with the off-duty employment guidelines.

QUESTION:

A Building Inspector for the Town of Irmo has questioned whether he may conduct quality control and warranty inspections and also check for code violations for a local builder. The builder does not build in the town and has not for several years.

DISCUSSION:

This opinion is rendered in response to a letter dated January 10, 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.

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 Building Inspector could not conduct such inspections for the builder.

Section 8-13-700(A) provides in part as follow:

(A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use which does not result in additional public expense.

The Commission advises, however, that such work should be discontinued if and when the builder begins work within the area of jurisdiction of the building inspector in accordance with Sections 8-13-705 and 8-13-730. Section 8-13-705 provides in part as follows:

(A) A person may not, directly or indirectly, give, offer, or promise anything of value to a public official, public member, or public employee with the intent to:

- (1) influence the discharge of a public official's, public member's, or public employee's official responsibilities;
- (2) influence a public official, public member, or public employee to commit, aid in committing, collude in, or allow fraud on a governmental entity; or
- (3) induce a public official, public member, or public employee to perform or fail to perform an act in violation of the public official's, public member's, or public employee's official responsibilities.

(B) A public official, public member, or public employee may not, directly or indirectly, knowingly ask, demand, exact, solicit, seek, accept, assign, receive, or agree to receive anything of value for himself or for another person in return for being:

- (1) influenced in the discharge of his official responsibilities;
- (2) influenced to commit, aid in committing, collude in, allow fraud, or make an opportunity for the commission of fraud on a governmental entity; or
- (3) induced to perform or fail to perform an act in violation of his official responsibilities.

Section 8-13-730 provides in part as follows:

...No person may be an employee of the regulatory agency which regulates a business with which he is associated if this relationship creates a continuing or frequent conflict with the performance of his official responsibilities.