

SUBJECT: OFF-DUTY EMPLOYMENT OF EMPLOYEE OF PUBLIC SERVICE COMMISSION WITH REGULATED BUSINESS

SUMMARY:

An employee of the Public Service Commission may work with a regulated freight mover since her position does not create a conflict, however, she is required to file a Statement of Economic Interests.

QUESTION:

An Administrative Assistant with the Public Service Commission has been working with Consolidated Freightways which is regulated by the Commission. She questions whether her off-duty employment is prohibited by the Ethics Reform Act.

DISCUSSION:

This opinion is rendered in response to a letter dated January 21, 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.

The Commission calls attention to Section 8-13-725 which provides:

No public official, public member, or public employee may use or disclose confidential information gained in the course of or by reason of his official responsibilities in any way that would affect an economic interest held by himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated.

The State Ethics Commission calls attention to the provisions of Section 8-13-730:

Unless otherwise provided by law, no person may serve as a member of a governmental regulatory agency that regulates any business with which that person is associated. An

employee of the regulatory agency which regulates a business with which he is associated annually shall file a statement of economic interests notwithstanding the provisions of Section 8-13-1110. 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.

From the facts as submitted, it does not appear that the employee has a position creating a conflict since she is an administrative employee, not directly involved in the regulatory process. She is not prohibited from working off-duty with a regulated freight mover, however, in accordance with this section, she is required to annually file a Statement of Economic Interests.