

SUBJECT: BOARD OF TRUSTEE MEMBER AS SUBCONTRACTOR ON CONTRACT WITH AGENCY

SUMMARY:

A Clemson University Trustee who is an officer and part owner of an architectural firm may not be a subcontractor to a business contracting with the University if he is authorized to perform an official function regarding such contract.

QUESTION:

A member of the Clemson University Board of Trustees is an officer and part owner of an architectural firm. He questions whether there is a violation for his business to be a sub-contractor to a business doing business with Clemson University so long as he complies with Sections 8-13-700 and 8-13-775.

DISCUSSION:

This opinion is rendered in response to a letter dated May 14, 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.

Section 8-13-700(B) provides in part as follows:

(B) 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:

(1) 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;

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(5) if he is a public member, he shall furnish a copy to the presiding officer 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 shall 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 such disqualification and the reasons for it to be noted in the minutes.

Section 8-13-100(11) provides as follows:

(11)(a) "Economic interest" means an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.

(b) This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee is incidental to the public official's, public member's, or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

The Trustee's participation in matters affecting a contract on which he may be a bidder would not necessarily be prohibited by this section provided all contractors would be equally affected by such contract, and further provided that the Trustee is not authorized to perform an official function within the meaning of Section 8-13-775. If, however, he has already been designated as a subcontractor to the business bidding on the contract, the Trustee is advised to follow the provisions of Section 8-13-700(B).

The State Ethics Commission further notes that Section 8-13-775 provides:

A 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.

The Trustee's firm is prohibited from contracting with Clemson University if he is authorized to

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perform any official function on the contract through writing or preparing specifications, acceptance of bids, award of the contract, or other action on the preparation or award of such contract, regardless of whether he followed the provisions of Section 8-13-700.