

SUBJECT: PROGRAM MANAGER SEEKING POST-EMPLOYMENT

SUMMARY:

An employee of the Attorney General's Office would not be prohibited from seeking or obtaining employment from a law firm engaged in the associate counsel program if he does not participate in matters affecting such firms which he interviews and provided he takes no action and obtains no financial benefit from legal representation in the program.

QUESTION:

The Executive Assistant for Administration in the Office of the Attorney General requests an opinion concerning his consideration of leaving that office to enter into private law practice. One of his job responsibilities is the management of the "associate counsel program" by which the Attorney General's Office approves utilization and payment of private law firms providing necessary legal services to various state agencies. He requests an opinion as to whether his interviewing and accepting employment with a private law firm that participates in that program would comply with the Ethics Reform Act. He seeks to avoid any conflict of interest by complying with the following:

- (1) Before interviewing with a firm, notify the Attorney General of his interviewing plans and recuse himself from participating in any decisions involving that firm in the program.
- (2) If he accepts employment from a firm participating in the program, he will not personally participate in any matter handled by the firm if the matter was subject to his approval.
- (3) If he accepts employment with a firm, he will not receive any financial benefit from fees received by the firm from program matters subject to his approval.
- (4) He will adhere to the prohibitions against representing clients or becoming a lobbyist before the Office of the Attorney General for a period of one year if the representation involved a matter in which he participated directly and substantially.
- (5) For a period of at least one year, he will not personally seek approval on behalf of a firm of its participation in the program or of approval of the handling of a matter by a firm under the program.
- (6) He will not undertake any representation which utilizes confidential information obtained during his period of public employment.

DISCUSSION:

This opinion is rendered in response to a letter dated June 8, 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 8-13-755 provides in part as follows:

A former public official, former public member, or former public employee holding public office, membership, or employment on or after January 1, 1992, may not for a period of one year after terminating his public service or employment:

(1) serve as a lobbyist or represent clients before the agency or department on which he formerly served in a matter which he directly and substantially participated during his public service or employment...

The Commission further notes the provisions of Section 8-13-760 which provides:

Except as is permitted by regulations of the State Ethics Commission, it is a breach of ethical standards for a public official, public member, or public employee who is participating directly in procurement, as defined in Section 11-35-310(22), to resign and accept employment with a person contracting with the governmental body if the contract falls or would fall under the public official's, public member's, or public employee's official responsibilities.

The Commission, in Advisory Opinion SEC AO92-101, reviewed the provisions of Section 8-13-760 as it applied to employment by a contractor whose contracts the employee had responsibility for letting or supervising. The Commission has previously advised that when such employee has not been involved with the affected contractor for a period of one year that such employment would not be prohibited.

Section 11-35-310(22) provides as follows:

"Procurement" means buying, purchasing, renting, leasing or otherwise acquiring any supplies, services or construction. It also includes all functions that pertain to the obtaining of any supply, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

The restriction contained in Section 8-13-760 applies to a contract over which the former employee would have responsibility for either letting, supervising, or otherwise taking action on. Absent such direct responsibility, the Commission knows of no reason why the former employee could not go to work for such firm.

From the facts as submitted, the Executive Assistant is not responsible for procurement as defined in Section 11-35-310(22). His responsibilities include approval of a law firm to enter the associate counsel program and approval of utilization and payment of such law firms. The conduct of such legal representation is within the jurisdiction of the agency requesting such legal service.

The Executive Assistant has identified those areas in which he will not participate or in which he will not participate in the legal fees should he be employed by a law firm involved in the program. The State Ethics Commission knows of no reason why he could not seek employment from law firms in accordance with the restrictions identified in his request letter.