

SUBJECT: POST-EMPLOYMENT OF FOOD SERVICES SPECIALIST

SUMMARY:

A former employee is prohibited from obtaining employment for one year from a contractor on contracts for which she was responsible for letting or supervising. The former employee would not be prohibited from being employed by a food service management company when she had no procurement responsibilities over such food service contracts.

QUESTION:

A former employee of the SC Department of Education served there as a Program Specialist for Food Services. She monitored Federal regulations for school breakfast and lunch programs. She provided technical assistance for school districts in matters of finance, methods of procurement, and marketing. She also participated in evaluating food service management company contracts as a non-voting committee member. She was never involved in the preparation of any district's contract. She assisted districts in writing the food purchasing specifications and by sitting in on prebid conferences as an official observer. She also taught purchasing procedures and methods. She intends to work for a food service management company which is employed at industrial establishments but is considering contracting with public schools. She questions whether there is any violation in her working for such company.

DISCUSSION:

This opinion is rendered in response to a letter dated June 17, 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:

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; or
- (2) accept employment if the employment:
  - (a) is from a person who is regulated by the agency or department on which the former public official, former public member, or former public employee served or was employed; and

(b) involves a matter in which the former public official, former public member, or former public employee directly and substantially participated during his public service or public employment.

Section 8-13-755(2) was intended to prohibit the "revolving door" whereby a regulator leaves public service and begins work with a regulated person on matters in which he had participated as a regulator. It does not appear from the facts as submitted that the employee had any regulatory responsibility. The State Ethics Commission further calls attention to 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.

In Advisory Opinion SEC AO92-101, the State Ethics Commission advised that this prohibition includes employment from 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 Commission advised in Advisory Opinion SEC AO92-101 that 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 food service management company.