

SUBJECT: POST-EMPLOYMENT OF HIGHWAY DEPARTMENT EMPLOYEE

SUMMARY:

A Highway Department employee would not be prohibited from accepting employment with the University of North Carolina, Institute for Transportation Research and Education; however, he is prohibited from lobbying the agency or representing clients before the agency on matters in which he personally and substantially participated for a period of twelve months from the date of leaving employment.

QUESTION:

An employee of the South Carolina Department of Highways and Public Transportation requests an advisory opinion concerning his intent to terminate his government service and accept employment with the University of North Carolina, Institute for Transportation Research and Education (ITRE). The employee's first contact with ITRE occurred in October, 1991, when he attended one of the Institute's seminars on traffic control. A few months later in February, 1992, the employee made an initial inquiry regarding employment opportunities with ITRE. In May, 1992, the State Materials Management Office solicited proposals for a Highway Department Work Zone Safety Project. ITRE submitted a proposal in response to this request. Subsequently, a review panel, on which the employee did not serve, considered the project proposals and in June, 1992, elected to award the contract to ITRE. Since that time, the employee's only role in the Work Zone Safety Project has been as a member of a large committee which manages the project. The committee is composed of representatives from six SCDHPT offices, two additional state

agencies and four professional associations. Although the committee chairman has direct contact with ITRE on project matters, neither the committee nor the Highway Department regulates or governs the general activities of ITRE. In response to an August, 1992 newspaper advertisement, the employee applied for a position with ITRE, for which he is now being considered.

DISCUSSION:

This opinion is rendered in response to a letter dated September 2, 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.

This prohibition applies to any employee who was employed by a public agency within South Carolina on or after January 1, 1992. This restriction includes a prohibition against serving as a lobbyist or representing clients before the former agency for a period of one year on matters on which the employee directly and substantially participated. 'Directly' is often defined as "without [any] intervening agency or person. . . not by secondary but by direct means." 26(a) C.J.S. pp. 956, 957. See also, Tangen v. State Ethics Commission, 550 P.2d 1275 (1976). 'Substantially' is a more difficult word to define. In fact, substantial has been said to be "as elusive a word as the English language contains." 83 C.J.S. p. 762. However, considering the context, the Commission finds substantially as "of real worth and importance; of considerable value; valuable." Tax Commission of Ohio v. American Humane Education Soc., et al., 181 N.E. 557 (1931). See also, 83 C.J.S. p. 762. Based on the facts presented, the ITRE position would entail neither lobbying nor representing clients; thus, the restrictions of Section 8-13-755(1) would not apply. Similarly, in Advisory Opinion SEC AO93-004, the Commission stated that, "it does not appear that the [South Carolina Department of Highways and Public Transportation] regulates; therefore, the restrictions contained in Section 8-13-755(2) would not apply." Moreover, the facts disclose that the employee had no contact or ongoing dialogue with ITRE regarding employment between his very general inquiry in February of 1992 and his response to their advertised opening in August of 1992, two months after ITRE had been awarded of the contract. For these reasons, the State Ethics Commission knows of no restrictions prohibiting the employee's acceptance of employment with ITRE.