

SEC AO93-069

March 15, 1993

SUBJECT: COUNTY TAX ASSESSOR, ASSISTANT TAX ASSESSORS AND COUNTY AUDITOR PERFORMING PRIVATE APPRAISAL WORK

SUMMARY:

Absent internal procedures to prevent conflicts between private property appraisals and those conducted for the county, the Marion County Auditor, County Tax Assessor and assistant tax assessors are advised against performing private property appraisals within the county in which they serve.

QUESTION:

The Marion County Attorney requests an advisory opinion concerning the County Tax Assessor, assistant tax assessors and the County Auditor performing private property appraisals. State law requires that all tax assessors and other individuals employed as appraisers in a tax assessor's office obtain a state license. Marion County paid for the courses which the individuals were required to complete before their licences could be issued. Some of these individuals are now doing appraisals for banks and other lending institutions as well as in some domestic matters. The individuals are paid for their work by those for whom the appraisal is conducted. Neither of these county agencies has established any office guidelines or procedures which would diminish the risk of conflicts between appraisals done for tax purposes and those performed for other purposes.

DISCUSSION:

This opinion is rendered in response to a letter dated January 12, 1993 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.

1. Given the potential for conflict between the appraisals done for tax purposes and those performed for other purposes, is it appropriate for these individuals who are employed in the Marion County Tax Assessor's Office to conduct private appraisal work?

The State Ethics Commission calls attention to the provisions of Section 8-13-700(B) which requires that in the event of a conflict of interest, a public official, member, or employee must recuse himself from participating in governmental actions or decisions. 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;

* * *

- (3) if he is a public employee, he shall furnish a copy of the statement to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he shall take the action prescribed by the State Ethics Commission;

Further, the Commission calls attention to the provisions of Section 8-13-705(A) and (B) which provide:

(A) A person may not, directly or indirectly, give, offer, or promise anything of value to a public official, public member, or public employee with the intent to:

- (1) influence the discharge of a public official's, public member's, or public employee's official responsibilities;
- (2) influence a public official, public member, or public employee to commit, aid in committing, collude in, or allow fraud on a governmental entity; or
- (3) induce a public official, public member, or public employee to perform or fail to perform an act in violation of the public official's, public member's, or public employee's official responsibilities.

(B) A public official, public member, or public employee may not, directly or indirectly, knowingly ask, demand, exact, solicit, seek, accept, assign, receive, or agree to receive anything of value for himself or for another person in return for being:

- (1) influenced in the discharge of his official responsibilities;
- (2) influenced to commit, aid in committing, collude in, allow fraud, or make an opportunity for the commission of fraud on a governmental entity; or
- (3) induced to perform or fail to perform an act in violation of his official responsibilities.

In previous advisory opinions, the State Ethics Commission has advised that public employees could engage in outside employment consistent with the following 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 such employment.

In one of these earlier decisions, SEC AO92-173, the State Ethics Commission addressed a similar question involving Tax Commission employees performing private property appraisals. The State Ethics Commission held that generally, "it would be inappropriate for a public employee to accept compensation from a person whose activities are subject to the employee's inspection, review, or administrative action." Unlike the present situation, the Tax Commission had established internal procedures under which its employees could perform private property appraisals without risking a conflict with their official activities. For that reason, the Commission concluded that the Ethics Reform Act did not prohibit Tax Commission employees from conducting private appraisals, provided such work was performed in accordance with the off duty employment guidelines and the Tax Commission's internal policies.

According to the information provided, the Marion County Tax Assessor's Office has no procedures which would decrease the risk of conflicts between appraisals done for tax purposes and those performed for other purposes. The State Ethics Commission believes such conflicts would jeopardize both the productivity and effectiveness of the Tax Assessor's Office. Therefore, the Commission advises the employees of the Marion County Tax Assessor's Office to refrain from conducting private property appraisals within Marion County until such time as it can be shown that the private appraisal work does not interfere with the needs of the agency.

2. Is it appropriate for these individuals to use a license for personal gain which has been paid for by public funds? Are these individuals required to reimburse the county for the cost associated with their obtaining these licenses?

Section 8-13-700(A) provides as follows:

No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use which does not result in additional public expense.

According to the facts submitted, the courses which the county paid for were required in order for these individuals to obtain the state certification necessary for employment in the County Tax Assessor's Office. It does not appear that the individuals either obtained their private work as a result of their public employment or that such work has resulted in additional public expense. For these reasons, the Commission advises that the Ethics Reform Act neither prohibits the off duty use of the licenses (outside Marion County) nor compels the individuals to reimburse the county for the costs

associated in obtaining their certification.

3. Prior to his election, the County Auditor was a private real estate appraiser. May he continue to do private appraisal work?

The State Ethics Commission notes that unlike most public employees, elected officials usually do not have a formal work schedule. Although they are not required to be at work twenty-four hours a day, because of their unique positions, it is often difficult to distinguish between on duty and off duty. In addition, a county auditor's authority extends throughout the county. For these reasons, complying with Section 8-13-700(B) as well as the off duty employment guidelines could prove onerous for an elected county official. Accordingly, the Commission advises the Marion County Auditor to refrain from conducting private property appraisals within the county in which he serves.