

SUBJECT: DHEC EMPLOYEE PERFORMING CONSULTANT SERVICES FOR FEDERAL GOVERNMENT AND INDEPENDENT SOCIAL WORK

SUMMARY:

A DHEC employee would not be prohibited from performing either independent social work or consultant services for the federal government, provided that such activities are not part of the employee's official responsibilities and are performed in accordance with the off duty employment guidelines.

QUESTION:

The Staff Counsel for the Department of Health and Environmental Control (DHEC) inquires whether it is permissible for a DHEC employee to accept compensation from the federal government for certain consultant activities as long as these activities are performed outside of normal office hours and do not involve the use of state facilities or equipment. The Director of the Minority Health Office is a licensed independent social worker and is responsible for developing, coordinating, promoting, monitoring and evaluating programs and services which address the health issues and problems of the State's minority population. The federal government has sought out this individual to make an objective review of federal grant proposals and to prepare detailed analyses and recommendations for funding various grant programs. This project will require extensive preparation and participation on a peer review panel, and it appears the endeavor will be quite time consuming. Additionally, DHEC inquires whether this employee may accept compensation for work done as an independent social worker under her license so long as this performance is completely separate from any DHEC job requirements.

DISCUSSION:

This opinion is rendered in response to a letter dated May 5, 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.

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

(A) 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

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does not result in additional public expense.

In prior advisory opinions, the State Ethics Commission has advised that a public employee may engage in outside employment consistent with 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 the employment.

In addition, the State Ethics Commission calls attention to Section 8-13-720, which prohibits the payment of extra compensation and provides as follows:

No person may offer or pay to a public official, public member, or public employee and no public official, public member, or public employee may solicit or receive money in addition to that received by the public official, public member, or public employee in his official capacity for advice or assistance given in the course of his employment as a public official, public member, or public employee.

Based on the facts submitted, the Director of Minority Health would not be prohibited from performing either independent social work or consultant services for the federal government, provided that such activities are not part of the employee's official responsibilities and are performed in accordance with the off duty employment guidelines.