

SUBJECT: SPOUSE OF CIVIC CENTER DIRECTOR ASSOCIATED WITH EVENT PROMOTION COMPANY

SUMMARY:

A civic Center Director whose spouse is co-owner of an event promotion company is advised to follow the provisions of Section 8-13-700(B) in maintaining an arms length relationship with that business.

QUESTION:

The Anderson County Attorney is requesting an opinion on behalf of the Civic Center Director. The Director's wife is co-owner of a company which sponsors, promotes, or holds several events each year at the Civic Center. He questions the continued relationship between the Civic Center and the company.

DISCUSSION:

This opinion is rendered in response to a letter dated December 12, 1991 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:

(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 does not result in additional public expense.

The Director cannot utilize his office to obtain an economic benefit for the company with which his wife is associated. An economic benefit could be an adjustment of the center schedule to accommodate event being planned by the company. Accommodations or provision of goods and/or services not available to other similarly-situated companies on the same terms and conditions would violate this section.

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;

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(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;

The Director is prohibited from taking action or making decisions regarding a contract with his wife's company. He is required to provide a written statement to his superior who must assign the matter to another employee or official to take the required action. The Director cannot otherwise participate in the matter on which he has the conflict.

Section 8-13-705(B) prohibits the Director from soliciting or accepting anything of value to influence an official action. Section 8-13-705(B) provides:

(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.

Section 8-13-720 provides:

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.

The Director, thus is prohibited from receiving or accepting any money from any person in addition to normal compensation for the conduct of his position responsibilities.

The State Ethics Commission also calls attention to Section 8-13-725 which prohibits use of confidential information to affect his economic interests. Section 8-13-725 provides:

No public official, public member, or public employee may use or disclose confidential information gained in the course of or by reason of his official responsibilities in any way that would affect an economic interest held by himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated.

The Director is not prohibited from continuing employment with the Civic Center while his spouse is co-owner of the event promotion company. He is advised that the above-quoted provisions of the Ethics Reform Act require him to maintain an arms-length relationship with his spouse's company and its relationship to the Civic Center.