

SUBJECT: HIGHWAY DEPARTMENT EMPLOYEE PREPARING ENCROACHMENT
DRAWINGS

SUMMARY:

A Highway Department Engineering Technician would be prohibited from preparing engineering drawings for encroachment permit applications on his own time for developers and contractors since he is responsible for inspecting their work.

QUESTION:

An Engineering Technician for the Department of Highways and Public Transportation questions whether he can prepare engineering drawings for encroachment permit applications on his own time. His responsibility includes inspection of all work performed under encroachment permits. He receives encroachment permits and recommends changes to insure that the Department's interests are protected. The Department has advised him that he can show permit applicants how to fill out the application and point out the Department's minimum and maximum widths for their sketches but that he can not do the work on Department time. Some developers and contractors have approached him to do the engineering design work on his own time for which he would be paid.

DISCUSSION:

This opinion is rendered in response to a letter dated January 8, 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.

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 such employment.

The State Ethics Commission calls attention to the provisions of Section 8-13-700(B) which 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.

The State Ethics Commission finds it inappropriate for a public employee to be accepting compensation from an applicant for an encroachment permit which the employee is responsible for inspecting. Consequently, the Commission advises that the employee not engage in such off-duty work with developers or contractors whose work he is responsible for inspecting in the course of his position responsibilities.