

SUBJECT: CONSULTING BY UNIVERSITY PRESIDENT

SUMMARY:

The President of Clemson University would not be prohibited from consulting with a corporation whose chairman serves on the University's Board of Trustees. Neither the President nor the Trustee may participate in matters affecting the economic interests of each other in accordance with Section 8-13-700(B).

QUESTION:

The President of Clemson University questions whether he may continue to be engaged as a consultant to Amick Farms. Amick Farms is a privately held corporation whose chairman is also Chairman of the Board of Trustees of Clemson University. The President's job performance is rated annually by the Executive Committee of the Board, composed of the Chairman and the chairmen of the six standing committees of the Board. The President is compensated at a rate of \$25,000 per year to provide strategic planning and the development of long-term strategies. The consulting work is performed on the President's own time and does not conflict with his duties. Amick Farms has no contractual arrangements with either Clemson or the State.

DISCUSSION:

This opinion is rendered in response to a letter dated January 15, 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 the employment.

Consulting on an employee's off-duty hours would not be prohibited by the Ethics Reform Act consistent with these guidelines. However, 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;

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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;

Individual with whom he is associated is defined in Section 8-13-100(21) as:

"Individual with whom he is associated" means an individual with whom the person or a member of his immediate family mutually has an interest in any business of which the person or a member of his immediate family is a director, officer, owner, employee, compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

Thus, both the President and the Chairman would be required to follow the provisions of Section 8-13-700(B) on matters affecting the economic interests of each other. Section 8-13-700(B) requires the provision of the statement of potential conflict to be provided to the superior or presiding officer. The State Ethics Commission advises that any such statement required because of this consulting arrangement be provided by the person with the conflict(i.e., the President or Chairman) to the person who would be presiding in the absence of the Chairman.