

SUBJECT: POST EMPLOYMENT RESTRICTIONS

SUMMARY:

An employee of a regulatory agency would not be prohibited from accepting employment with private businesses or governments involving matters in which he did not participate directly and substantially.

QUESTION:

An employee for a regulatory agency had responsibility for inspecting certain regulated facilities until two years ago. Since then, the employee has been responsible for other regulatory functions unrelated to those for which he had previous responsibility. The employee questions whether he may accept employment in areas related to his earlier regulatory responsibilities.

DISCUSSION:

This opinion is rendered in response to a letter dated February 18, 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.

Section 8-13-755 provides:

A former public official, former public member, or former public employee holding public office, membership, or employment on or after January 1, 1992, may not for a period of one year after terminating his public service or employment:

- (1) serve as a lobbyist or represent clients before the agency or department on which he formerly served in a matter which he directly and substantially participated during his public service or employment; or
- (2) accept employment if the employment:
  - (a) is from a person who is regulated by the agency or department on which the former public official, former public member, or former public employee served or was employed; and
  - (b) involves a matter in which the former public official, former public member, or former public employee directly and substantially participated during his public service or public employment.

Section 8-13-755(2) was intended to prohibit the "revolving door" whereby a regulator leaves public service and begins work with a regulated person on matters in which he had participated as a regulator. Employment could not be entered into with a regulatee with responsibilities including those specific matters with which the person was engaged while with the regulatory agency. Absent responsibilities on those specific matters, there would not be a prohibition against such employment.

From the facts as submitted, it appears that the employee had no direct and substantial participation over the potential area of employment. Therefore, the employee would not be prohibited from seeking employment as specified.

