

SUBJECT: OFF-DUTY EMPLOYMENT OF CONTINUUM EMPLOYEE

SUMMARY: A public employee may be associated with an organization which contracts with her agency if she is not authorized to perform any official function regarding such contracts.

QUESTION: The Director, Planning and Development for the Continuum of Care for Emotionally Disturbed Children has requested reconsideration of her employment and contractual relationships. The State Ethics Commission issued Advisory Opinion SEC91-048 to the Continuum in March 1991. In that opinion, the Continuum stated:

A high level employee in the State Office of the Continuum is the part-time Director of a county emergency children's shelter. The employee reports to the shelter governing board and receives some compensation from the county for services rendered. On occasion, Continuum clients are placed in the shelter by our regional office staff and the Continuum pays the daily cost of the placement. Frequently, the shelter is seen as the last resort for a child and the cost per day is significantly less than the majority of other residential placements paid for by the Continuum. Our employee is not involved in making any referrals to the shelter, but has some influence as to whether referrals will be accepted or rejected. The employee's compensation by the county is not affected by the number of placements in the shelter or the revenue generated by the shelter.

She also advises that she has a contractual relationship with the Shelter's Board to serve as Executive Director, as well as a contract with Lexington County to direct the shelter. Both bodies pay a portion of her compensation through separate contracts.

DISCUSSION:

This opinion is rendered in response to a letter dated April 14, 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 8-13-700(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 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. From the facts as submitted, it appears that the off-duty employment activities mentioned are not within the official responsibility of the Director, therefore, such employment in accordance with the above-quoted guidelines would not be prohibited.

The employee is reminded that, if required to take action as a public employee which will affect the economic interests of the Shelter, she follow the procedures 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;

A public employee who is required to file a Statement of Economic Interests must disclose on the Statement of Economic Interests in accordance with Section 8-13-1120(A)(8) any compensation received from a business which also has a contract with the governmental entity with which the

public employee serves.

- (A) A statement of economic interests filed pursuant to Section 8-13-1110 must be on forms prescribed by the State Ethics Commission and must contain full and complete information concerning:

* * *

- (8) if a public official, public member, or public employee receives compensation from an individual or business which contracts with the governmental entity with which the public official, public member, or public employee serves or is employed, the public official, public member, or public employee must report the name and address of that individual or business and the amount of compensation paid to the public official, public member, or public employee by that individual or business;

The State Ethics Commission further calls attention to the provisions of Section 8-13-775 which provides as follows:

A public official, public member, or public employee may not have an economic interest in a contract with the State or its political subdivisions if the public official, public member, or public employee is authorized to perform an official function relating to the contract. Official function means writing or preparing the contract specifications, acceptance of bids, award of the contract, or other action on the preparation or award of such contract. This section is not intended to infringe on or prohibit public employment contracts with this State or a political subdivision of this State.

A public employee is advised that the Shelter may contract with the Continuum when the official functions are not authorized to be performed by the public employee. She is further advised to follow the provisions of Section 8-13-700(B) on matters requiring her action which affect such contracts.