

SUBJECT: PUBLIC EMPLOYEE'S SPOUSE EMPLOYED BY HOTEL WITH WHICH THE STATE AGENCY FREQUENTLY CONTRACTS

SUMMARY:

Public employee is prohibited from taking action or making decisions affecting the economic interest of his spouse's employer.

QUESTION:

The Deputy Director of the Emergency Preparedness Division of the State Adjutant General's Office is married to a longtime employee of the Town House Hotel. His spouse works part-time in the hotel's sales and catering office. She is paid by the hour and receives no additional compensation for business she brings in. The Deputy Director questions whether his agency may continue to contract with the Town House Hotel for accommodations during their twelve annual training sessions. Normally, the Deputy Director makes the decision on which hotel to use after receiving at least three bids as well as the recommendation of the program manager. The Town House Hotel is frequently selected due to its rates and close proximity (one block) from the division office.

DISCUSSION:

This opinion is rendered in response to a letter dated July 16, 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 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.

According to Section 8-13-100(18)(b), " 'Immediate family' means ...a spouse of a candidate, public official, public member, or public employee". Moreover, Section 8-13-100(4) provides as follows:

(4) 'Business with which he is associated' means a business of which the person or a

member of his immediate family is a director, an officer, owner, employee, a 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.

The State Ethics Commission also calls attention to the requirements 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.

Based on the facts submitted, the State Ethics Commission advises that the Emergency Preparedness Division would not be prohibited from contracting with the Town House Hotel. However, the Deputy Director would be prohibited from participating in the contracting process in accordance with Section 8-13-700(B) if the hotel; is a potential meeting location.