

SUBJECT: SPOUSE OF COUNCIL OF GOVERNMENTS EXECUTIVE DIRECTOR
EMPLOYED BY CONSTRUCTION MANAGEMENT FIRM SELECTED TO
MANAGE PROJECTS ADMINISTERED BY THE COUNCIL

SUMMARY:

The management firm that employs the spouse of the Executive Director of the Appalachian Council of Governments is not prohibited from managing projects administered by the Council, provided the director takes no action regarding the hiring of the firm and has no supervisory or management authority over the spouse.

QUESTION:

The Community Development Assistant for the Appalachian Council of Governments questions whether the construction management firm that employs the spouse of the Council's Executive Director may manage projects administered by the Council. The matter in question involves the procurement of a construction manager for two housing rehabilitation projects administered by the Appalachian Council of Governments. One of the management firms that submitted proposals for these projects employs an associate who is the spouse of the Executive Director of the Council. The Executive Director did not participate in either the rating of the proposals or in the making of the decision about whom to hire. Moreover, at no time did the Executive Director approach the two Council employees who rated the proposals regarding their evaluations. The ultimate hiring decision was made by the two grantees of the projects, the City of Easley and the Town of Central.

DISCUSSION:

This opinion is rendered in response to a letter dated September 10, 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 8-13-750 provides:

(A) No public official, public member, or public employee may cause the employment, appointment, promotion, transfer, or advancement of a family member to a state or local office or position in which the public official, public member, or public employee supervises or manages.

(B) A public official, public member, or public employee may not participate in an action relating to the discipline of the public official's public member's, or public employee's family member.

Section 8-13-100(15) defines Family member as follows:

"Family member" means an individual who is:

- (a) the spouse, parent, brother, sister, child, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild; or
- (b) a member of the individual's immediate family.

Section 8-13-100(18) defines Immediate family as follows:

"Immediate family" means:

- (a) a child residing in ... the household;
- (b) a spouse ...; or
- (c) an individual ... claimed as a dependent for income tax purposes.

The Commission addressed a similar issue in Advisory Opinion AO92-096 in which the Director of the Marion County Technical Education Center was advised that his spouse would not be prohibited from being hired, provided the Director took no action regarding the hiring and had no supervisory or management authority over the spouse. Based on the facts presented, the Commission advises that the management firm employing the Executive Director's spouse may be hired to manage projects administered by the Council so long as the Executive Director does not directly supervise or take other action affecting personnel actions regarding his spouse. The Executive Director is further advised to follow 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 on interest. If he has no immediate superior, he shall take the action prescribed by the State Ethics Commission.

Economic Interest is defined in Section 8-13-100(11) as:

(11)(a) Economic interest" means an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.

(b) This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee is incidental to the public official's, public member's , or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

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