SEC AO93-021   October 21, 1992

SUBJECT: POST-EMPLOYMENT OF FORMER PUBLIC EMPLOYEE

SUMMARY:

A retired public employee would not be prohibited from establishing himself as a free lance consultant; however, he is prohibited for a period of twelve months from the date of leaving public service from lobbying the agency or representing clients before the agency with which he served on matters which he directly and substantially participated during his public employment.

QUESTION:

A former right of way appraiser for the South Carolina Department of Highways and Public Transportation has established himself as a private right of way consultant. His work entails rendering advice to property owners from whom rights of way are being sought. His services have been requested in conjunction with an improvement project in the vicinity of Interstate 85 and the White Horse Road area of Greenville County. The former employee did not make any appraisals in this area prior to his retirement; however, he did gather some cost data relevant to this project from the Greenville County Courthouse.

DISCUSSION:

This opinion is rendered in response to a letter dated August 11, 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.

This prohibition concerns any employee who was employed by a public agency within South Carolina on or after January 1, 1992. This restriction includes a prohibition against serving as a lobbyist before the former agency or representing clients before that agency for a period of one year on matters on which the employee directly and substantially participated. 'Directly' is often defined as "without [any] intervening agency or person. . . not by secondary but by direct means." 26(a) C.J.S. pp. 956, 957. See also, Tangen v. State Ethics Commission, 550 P.2d 1275 (1976). 'Substantially' is a more difficult word to define. In fact, substantial has been said to be "as elusive a word as the English language contains." 83 C.J.S. p. 762. However, considering the context, the Commission finds substantially as "of real worth and importance; of considerable value; valuable." Tax Commission of Ohio v. American Humane Education Soc., et al., 181 N.E. 557 (1931). See also, 83 C.J.S. p. 762. According to the facts submitted, the former employee's participation with this particular project was limited to gathering cost data in the course of completing a cost study. Therefore, it is difficult to characterize such involvement as "direct and substantial" within the meaning of the Ethics Act.

Additionally, it does not appear that the agency with which the former employee was associated regulates; therefore, the restrictions contained in Section 8-13-755(2) would not apply.

The State Ethics Commission knows of no restrictions, other than those outlined in Section 8-13-755(1), which would prohibit consulting work by the former employee.

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