

REVISED

SEC AO93-048

December 16, 1992

SUBJECT: CITY ATTORNEY'S FIRM DOING LEGAL WORK FOR THE CITY

SUMMARY:

A City Attorney is advised not to utilize his official position to obtain business for his firm. Any additional legal advice rendered by his law firm or himself beyond that for which he is compensated should be approved in advance by the appropriate City official.

QUESTION:

The City Attorney for Spartanburg is compensated on a salary or retainer basis for general legal advice to the City, attending Council meetings, and handling routine matters. On matters which involve significant time thru his law firm, he bills the City on an hourly rate. From time to time, the City has need for legal services that do not come within his expertise or that he prefers not to handle. In those instances, he has utilized lawyers within his firm or outside his firm. Effective August 1, 1992, his firm will merge with another law firm which has a number of lawyers qualified to assist him in providing legal services to the City. He questions whether this association or employment of attorneys within the firm conflicts with the Ethics Reform Act.

DISCUSSION:

This opinion is rendered in response to a letter dated July 6, 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 8-13-775 provides:

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.

It appears, from the facts as submitted, that the City Attorney would be the person to make decisions

reflecting the nature and amount of workload to be accomplished by him or his law firm on an hourly basis. As such, it would appear to violate the provisions of Section 8-13-775 and 8-13-700(A). Section 8-13-700(A) provides:

(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.

The State Ethics Commission advises that the City Attorney not utilize his official position to obtain business for his firm. Any additional legal advice rendered by his law firm or himself beyond that for which he is compensated should be approved in advance by the appropriate City official.