

SUBJECT: POST-EMPLOYMENT

SUMMARY: The County Administrator is advised that he may accept employment with a private company that plans to bid on contracts with the County School District since the School District is a separate governmental entity over which the County Administrator has no official responsibilities.

QUESTION: A County Administrator asks whether Section 8-13-755 or any other provision of the Ethics Reform Act would prohibit him, as a former public employee, from working with a private company that may contract with government agencies, other than the County.

DISCUSSION:

The State Ethics 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 2-17-5 et seq. and Section 8-13-100 et seq., as amended, 1976 Code of Laws of South Carolina). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. Failure to disclose relevant information may void the opinion.

The State Ethics Commission calls attention to Section 8-13-755, which 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 applies to any employee who was employed by a public agency or department within South Carolina on or after January 1, 1992. This restriction includes a prohibition

against serving as a lobbyist or representing clients before the former department for a period of one year on matters on which the employee directly and substantially participated.

Based on the facts submitted, it does not appear that the County Administrator would be lobbying the County Council and its political subdivisions or representing clients before County Council and its political subdivisions. Rather the County Administrator would be working for a private business which hopes to contract with a separate government agency in the County. The County Administrator submits that the County School District is a completely separate governmental entity and that County Council does not approve the School District's budget, contracts or purchases. Accordingly, the restrictions contained in Section 8-13-755(1) do not seem to apply.

In addition, County Council and its political subdivisions do not appear to regulate the private business; therefore, the restrictions contained in Section 8-13-755(2) do not seem to apply. For these reasons, the State Ethics Commission advises that Section 8-13-755 would not prohibit the County Administrator from accepting employment with the private business.

Additionally, the Commission calls attention to Section 8-13-760, which provides:

Except as permitted by regulations of the State Ethics Commission, it is a breach of ethical standards for a public official, public member, or public employee who is participating directly in procurement, as defined in Section 11-35-310(22), to resign and accept employment with a person contracting with the governmental body if the contract falls or would fall under the public official's, public member's, or public employee's official responsibilities.

Section 11-35-310(22) provides as follows:

"Procurement" means buying, purchasing, renting, leasing or otherwise acquiring any supplies, services or construction. It also includes all functions that pertain to the obtaining of any supply, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

Section 8-13-100(23) provides as follows:

"Official responsibility" means the direct administrative or operating authority, whether intermediate or final and whether exercisable personally or through subordinates, to approve, disapprove, or otherwise direct government action.

CONCLUSION:

Accordingly, the Commission opines that because the County Administrator has had no official responsibility in the County School District's budgeting, contracting or purchasing, then the post-employment restrictions of Sections 8-13-755 and 8-13-760 are not applicable to the County Administrator's post-employment with a private business which hopes to contract with the County School District.

ANNOTATIONS: §8-13-100 (23), §8-13-755, §8-13-760
