

SEC AO2008-007

March 19, 2008

SUBJECT: POST-EMPLOYMENT

SUMMARY: A state employee is prohibited from seeking employment with a vendor which was recently awarded a contract in which he participated in the procurement as a public employee and would continue to oversee the contract if he were to remain in the public position.

QUESTION: Would obtaining employment with a vendor for a South Carolina contract with a state agency be a violation of the South Carolina Laws and the Code of Ethics?

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 agency for a period of one year on matters on which the public employee directly and substantially participated.

Based on the facts submitted, it does not appear that the state employee would be either lobbying his former employer or representing clients before the agency. He would be the vendor representative. Accordingly, the restrictions contained in Section 8-3-755(1) do not apply. In addition, the state agency does not regulate the vendor as the state agency is not a regulatory agency; therefore, the restrictions contained in Section 8-13-755(2) do not apply. For these reasons, the State Ethics Commission advises that Section 8-13-755 would not prohibit the state employee from accepting employment with the vendor.

However, 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.

The definition of procurement in Section 11-35-310(22) is quite broad and covers more than the mere award of the contract. Based on the information provided, the state employee has directly participated in the procurement of a contract. The state employee's administration of the contract for the new vendor services would preclude him from resigning his state position and accepting employment with the vendor to provide services under the contract he procured for the agency.

CONCLUSION:

A state employee is prohibited from seeking employment with a vendor which was recently awarded a contract in which he participated in the procurement as a public employee and would continue to oversee the contract if he were to remain in the public position.

KEY WORDS:	post-employment, procurement
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ANNOTATIONS:	8-13-755, 8-13-760, 11-35-310(22)
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