

# State of South Carolina

## State Ethics Commission

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**SEC AO2023-001**

**September 21, 2023**

**SUBJECT:** "PROCUREMENT" UNDER SECTION 8-13-760

**SUMMARY:** Section 8-13-760 of the Ethics Act applies to all public officials, public members, and public employees.

**QUESTION:** A retired public employee questions whether Section 8-13-760 applies to all public officials, public employees, and public members participating in procurement or whether its application is limited to "Materials Management Officer[s]."

**APPLICABLE LAW:**

Section 8-13-760 states:

Except as is 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. (emphasis added).

Section 11-35-310(22) states:

"Materials Management Officer" means the person holding the position as the head of the materials management office of the State.

Section 11-35-310(24) states:

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

## DISCUSSION

On March 27, 2023, a retired public employee requested an informal opinion from Commission staff as to whether he could perform work on a contract he helped to procure during his public employment. On March 29, 2023, Commission staff advised the employee that he could not perform work on the contract because he had participated in “procurement” as referenced in Section 8-13-760 and as defined in Section 11-35-310(24). On May 17, 2023, the employee requested a formal advisory opinion, arguing Section 8-13-760 references Section 11-35-310(22), not Section 11-35-310(24). Therefore, the employee argues, Section 8-13-760 applies only to individuals who have served as “Materials Management Officers,” as defined in Section 11-35-310(22).

The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature. Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000). The goal of statutory construction is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd. Id. A court should not consider a particular clause in a statute in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law. State v. Sweat, 379 S.C. 367, 665 S.E.2d 645 (Ct. App. 2008).

When the General Assembly enacted the Ethics Act, the definition of “procurement” in the South Carolina Consolidated Procurement code was contained in Section 11-35-310(22). In approximately 2000, the definition of procurement was moved to Section 11-35-310(24). Since 2000, Section 11-35-310(22) has been amended several times, most recently to contain the definition for “Materials Management Officer.”<sup>1</sup> During this time, Section 8-13-760 has remained unchanged.

In the opinion of the Commission, the prohibitions of Section 8-13-760 apply to all public officials, public members, and public employees – not simply those who hold or have held the position of Materials Management Officer for the State. The Commission makes this finding based on the language of Section 8-13-760 (“ . . . participating directly in *procurement*, as defined in . . . .”), the original definition contained within Section 11-35-310(22), and the overall purpose and intent of the Ethics Act, which is to hold all public servants accountable. The Commission further finds that limiting the applicability of Section 8-13-760 as a result of a scrivener’s error<sup>2</sup> to one employment position within the entire State would lead to an absurd result. See Jones v. State Farm Mut. Auto Ins. Co., 364 S.C. 222, 612 S.E. 2d 719 (Ct. App. 2005) (“Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention.”).

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<sup>1</sup> More specifically, from 2000-2009, Section 11-35-310(22) contained the definition of “Office,” then from 2009-2018, Section 11-35-310(22) contained no definition and was listed as “Reserved.”

<sup>2</sup> See State v. Browder, 277 S.C. 206, 284 S.E.2d 775 (2006) (finding defendant was properly sentenced despite code section’s citation to incorrect statutory provision).

**CONCLUSION**

Section 8-13-760 applies to all public officials, public members, and public employees who have participated in “procurement,” as defined in Section 11-35-310(24) and is not limited to those who have served as the “Materials Management Officer,” as defined by Section 11-35-310(22).