

SUBJECT: COMMISSIONER ASSOCIATED WITH FIRM CONDUCTING BUSINESS WITH COMMISSION

SUMMARY:

A Waterworks and Sewer Commissioner who is employed part-time by an engineering firm may participate in matters affecting engineering contracts; however, the Commissioner must comply with the provisions of Section 8-13-700(B) on matters affecting the firm's economic interests. The engineering firm is not prohibited by Section 8-13-775 from contracting with the Commission either as a contractor or subcontractor on any contracts which require official action by the Commissioner, since the Commissioner has no economic interests in these contracts.

QUESTION:

A publicly elected Commissioner on the Mount Pleasant Waterworks and Sewer Commission is employed part-time by an engineering firm to help find and establish new clients. The Commissioner is paid by the hour for his part-time work, and he receives no additional compensation for business he brings in to the firm. The Commissioner receives \$100.00 per month plus expenses for his service on the Waterworks and Sewer Commission. The engineering firm may, in the future, desire to provide engineering services to the Commission. Generally, such engineering services would result from a request for proposals from the Commission with final selection made by the Commission. Contract preparation and other specifications would be made by the Commission staff subject to Commission approval. He also advises that the firm may wish to subcontract work from another firm that has been awarded an engineering contract by the Commission. He questions whether the Ethics Reform Act would prohibit his firm from seeking or obtaining work as either a contractor or subcontractor. He further questions whether this firm could seek or obtain work from the Commission as a subcontractor if he abstained from any participation in the award of the work.

DISCUSSION:

This opinion is rendered in response to a letter dated May 21, 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 8-13-700(B) provides in part as follows:

(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to

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influence a governmental decision in which he, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated shall:

(1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;

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(4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy to the presiding officer of the governing body of any agency, commission, board, or of any county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes.

Thus, the Commissioner must comply with the requirements of Section 8-13-700(B) on matters affecting his employer's economic interests.

Section 8-13-100(11) provides as follows:

(11)(a) Economic interest" means an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.

(b) This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee is incidental to the public official's, public member's, or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

Accordingly, the Commissioner's participation in matters affecting a contract on which the firm with which he is associated may be a bidder would not be prohibited by this section, since all engineering

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firms would be equally affected by such contract.

The State Ethics Commission, however, notes that 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.

According to the facts submitted, the Commissioner is a part-time, hourly employee of the firm, whose duties do not go beyond efforts to locate new clients. The Commissioner does not perform design or engineering work for new clients. Moreover, the Commissioner's compensation is not based upon the amount new business brought in to the firm. Therefore, the Commissioner's firm is not prohibited from contracting with the Waterworks and Sewer Commission, since the Commissioner would have no economic interest in such a contract.