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Advisory Opinion 1993-041

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SUBJECT: PUBLIC EMPLOYEE RUNNING FOR PUBLIC OFFICE

SUMMARY:

A public employee is not prohibited by the Ethics Reform Act from running for and holding elective office. The employee is advised to follow the procedures of Section 8-13-700(B) if required to take action in one position affecting his service in the other position.

QUESTION:

The Executive Director of the Beaufort County Voter Registration and Election Commission questions whether a public employee may retain government employment while seeking public office. Moreover, if the employee is elected, what are the applicable terms and conditions of continued government employment?

DISCUSSION:

This opinion is rendered in response to a letter dated July 28, 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.

The State Ethics Commission knows of no reason why a public employee could not simultaneously run for public office. The employee is advised of the requirements of Section 8-13-765 which provides in part as follows:

(A) No person may use government personnel, equipment, materials, or an office building in an election campaign. The provisions of this subsection do not apply to a public official's use of an official residence.

* * *

(C) This section does not prohibit government personnel, where not otherwise prohibited, from participating in election campaigns on their own time.

In addition, the employee is advised of the provisions of Section 8-13-735 which states:

No person who serves at the same time on:

(1) the governing body of a state, county, municipal, or political subdivision board or commission, and

(2) as an employee of the same board or commission or serves in a position which is subject to the control of that board or commission may make or participate in making a decision which affects his economic interests.

Finally, the State Ethics Commission calls attention to the requirements of Section 8-13-700(B) which 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 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;

* * *

(3) if he is a public employee, he shall furnish a copy of the statement to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he shall take the action prescribed by the State Ethics Commission;

(4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement 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 such disqualification and the reasons for it to be noted in the minutes;

Based on the facts submitted, as well as prior advisory opinions, the State Ethics Commission advises that, if a person is allowed by other statutes to serve in more than one public position, that person should follow the procedures Section 8-13-700(B) on matters affecting the other public position.