

SUBJECT: CONTRACTING BY BAND STAFF

SUMMARY:

School district employees would not be prohibited from contracting with a high school band booster club in accordance with the off-duty employment guidelines and provided that such services are outside the employees' district contracts.

QUESTION:

The President of the Irmo Band Boosters Club requests an advisory opinion concerning the Club's plan to contract with the three professional staff members. The Club is an unincorporated, non-profit association whose purpose is to promote and support the instrumental music program at Irmo High School. The Club supports the band by funding most of the extracurricular activities of the band and by supplementing the band's operating budget for equipment purchases, supplies, travel, contracted services, and other miscellaneous expenses. The marching band's professional staff includes the High School Band Director, the Band Director from the Middle School, and the flag/drill sponsor. Other marching band staff and consultants are not school district employees. The Club plans to contract with the three staff members for a period of time during the summer months when they are not under contract and for a scope of work not covered by their teaching contract or related supplements. Specifically, the Club desires to contract with the band staff to research extensively those band programs which have historically and consistently enjoyed national recognition and acclaim. Further, the staff will endeavor to identify the critical aspects of those programs which have attributed to their continued success. Finally, the staff will prepare a report for the Club regarding these aspects, with emphasis on those which may be incorporated by the Irmo High School Marching Band and its component ensembles.

DISCUSSION:

This opinion is rendered in response to a letter dated June 24, 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(A) provides as follows:

(A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic for himself, a member of his immediate family, an individual with whom he is associated, or a

business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use which does not result in additional public expense.

In prior advisory opinions, the State Ethics Commission has advised that a public employee may engage in outside employment consistent with established guidelines: (1) that no public materials or equipment are utilized, except as provided by Section 8-13-700(A), (2) such work is engaged in on the employee's own time, (3) the work does not interfere with the needs of the agency, and (4) the public position is not utilized to obtain or continue the employment.

Section 8-13-720, which prohibits extra compensation, provides as follows:

No person may offer or pay to a public official, public member, or public employee and no public official, public member, or public employee may solicit or receive money in addition to that received by the public official, public member, or public employee in his official capacity for advice or assistance given in the course of his employment as a public official, public member, or public employee.

Thus, the band staff could not receive compensation from the booster club if the services contracted for are within the staff's course of employment with the school district. However, from the facts submitted, it appears that the services described above are not included within the staff members' district contracts. Moreover, the services will be performed during the summer months when the staff is not under contract with the school district. For these reasons, the professional band staff members would not be prohibited from contracting with the booster club in accordance with the off-duty employment guidelines.