

# *State of South Carolina*

## *State Ethics Commission*

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**201 EXECUTIVE CENTER DRIVE, SUITE**  
**150**  
**COLUMBIA, S.C. 29210**

**MEGHAN WALKER DAYSON**  
**EXECUTIVE DIRECTOR**

May 2, 2023

### **VIA ELECTRONIC MAIL ONLY**

Rebeca Hill  
Colleton County Clerk of Court  
rhill@colletoncounty.org

Re: Informal Opinion Request

Dear Ms. Hill:

Thank you for your request for an informal opinion from the State Ethics Commission (Commission). An informal opinion is the opinion of Commission staff, taking into consideration any applicable formal opinions, law, and/or judicial decisions. Please be advised that an informal opinion is not binding on the Commission. Additionally, the Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act). This opinion is based solely on the facts relayed by you and does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. A failure to disclose relevant information may void the opinion.

### **ISSUE**

In an email dated April 28, 2023, you submitted the following relevant information:

Good morning, Courtney, my name is Rebecca [H]ill and I am the clerk of court in [Colleton County]. I have a question about the writing of a book by a clerk of court about the process of trial from beginning to end, [f]ocusing on the process itself the history of it and of course the High profile cases that South Carolina has had. What would be the ethic procedures behind this?

## LAW

Section 8-13-700(A) states, in relevant part:

No [public employee] may knowingly use his official [employment] to obtain an economic interest for himself, a family member, 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 employee's] use that does not result in additional public expense.

Section 8-13-720 provides, in relevant part:

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

Section 8-13-100(30) defines “official capacity” as activities which:

- (a) arise because of the position held by the public official, public member, or public employee;
- (b) involve matters which fall within the official responsibility of the agency, the public official, the public member, or the public employee; and
- (c) are services the agency would normally provide for and for which the public official, public member, or public employee would be subject to expense reimbursement by the agency with which the public official, public member, or public employee is associated.

Section 8-13-100(23) defines “official responsibility” as:

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.

Section 8-13-725 provides, in relevant part:

- (A) A [public employee] may not use or disclose confidential information gained in the course of or by reason of his official responsibilities in a way that would affect an economic interest held by him, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated.
- (B) (1) A [public employee] may not willfully examine, or aid and abet in the willful examination of, a tax return of a taxpayer, a worker's compensation record, a record in connection with health or medical treatment, social services records, or other record of an individual in the possession of or within the access of a public department or agency if the purpose of the examination is improper or unlawful.

Section 8-13-100(7) defines “confidential information” as:

information, whether transmitted orally or in writing, which is obtained by reason of the public position or office held and is of such nature that it is not, at the time of transmission, a matter of public record or public knowledge.

## DISCUSSION

Under Section 8-13-720 of the Ethics Act, a public employee is prohibited from receiving extra compensation for the performance of duties that she would be expected to undertake in her official capacity. To determine whether the proposed outside employment is permissible, analysis of the term “official capacity” is required. There is a three-pronged definition of this term in the Ethics Act, and all three of these elements must be present for the outside employment to be considered within a public employee’s official capacity. Here, you must consider the following questions:

- (1) Does the opportunity for the activity arise as a result of your position as Clerk of Court?
- (2) Is the subject matter of the work something within your official responsibility?
- (3) Is this type of work something that the Clerk of Court’s Office would normally perform and for which you could receive expense reimbursement for by the Clerk of Court’s Office?

If the answers to ALL of these questions are yes, then writing the book would be within your official capacity and it would be impermissible for you to receive compensation for writing the book. In the opinion of Commission staff, it seems unlikely that writing a book would fall within your official responsibilities as Clerk of Court. However, you will have to make that ultimate determination based on your official duties and the guidelines offered above.

If the answer to ANY of the above questions is no, then the work is not within your official capacity, and you may receive compensation for authoring the book so long as you adhere to the Commission’s guidelines on off-duty employment. In prior advisory opinions, the Commission has advised that a public employee may engage in outside employment so long as: (1) no public materials or equipment are utilized, except incidental use resulting in no cost to the State as allowed by Section 8-13-700(A); (2) such work is engaged in on the employee’s own time; 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.

Finally, please be advised that you are prohibited from using any confidential information, as that term is defined in Section 8-13-100(7), in furtherance of your own economic interest. If you have questions about whether a particular piece of information is considered confidential under the Ethics Act, please do not hesitate to seek guidance. Thank you for contacting the Commission.

Sincerely,



Courtney M. Laster  
General Counsel