

SUBJECT: BOARD MEMBER'S PARTICIPATION IN BOARD ACTIONS

SUMMARY:

A School Board Member would not generally be prohibited from taking actions on school assignments or school buildings since such actions do not directly affect his economic interests.

QUESTION:

The Legal Counsel for the School District of Greenville County requests an opinion concerning a Board Member's participation in certain board deliberations and actions. The Board Member is a developer whose company has developed and will continue to develop a number of residential subdivisions in the school district. He has an interest in selling the properties and in maximizing the return on his investment. Another Board member has questioned this Member's participation in school assignment decisions. The question raised was whether his participation in these decisions would wrongfully procure for him or his company an economic benefit by ensuring that subdivisions he has developed are made more attractive by assigning those subdivisions to attend schools deemed more desirable. The Legal Counsel also questions the Board Member's participation in decisions on building new schools and remodeling present schools as such decisions could arguably enable him to market a subdivision more successfully.

DISCUSSION:

This opinion is rendered in response to a letter dated June 2, 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 for certain actions to be taken by a public official. 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 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 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 the disqualification and the reasons for it to be noted in the minutes;

Economic Interest is defined in Section 8-13-100(11) as:

(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.

In Advisory Opinion AO92-064, the Commission advised Hospital board members who were also school district employees that they would not be prohibited from deliberating and voting on the hospital's participation in the State Blue Cross Plan since the economic benefits would accrue to all members of a large class.

In Advisory Opinion SEC AO92-155, the State Ethics Commission advised that members of a redevelopment commission would not be prohibited from deliberating and voting on matters which would not affect their economic interests to any greater extent than other members of the large class, i.e., all owners of properties in the affected area.

From the facts as submitted, it does not appear that actions on assignment of students have a direct

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financial impact on the Board Member's financial interests. Nor would deliberations and votes on the building or remodeling of school facilities. Any such financial impact is strictly speculative. Therefore, the State Ethics Commission would advise that the School Board Member/Developer would not be generally prohibited from participating in deliberations and votes on issues affecting the assignment of students or the building or remodeling of school facilities.