

**SUBJECT: BOARD MEMBERS SERVING ON PRIVATE INDUSTRY COUNCIL AND CONDUCTING BUSINESS WITH AGENCY**

**SUMMARY:**

If public members are authorized to perform an official function regarding a contract as defined in Section 8-13-775, they would be prohibited from bidding on and performing such contracts. Absent this official function, board members would be permitted to bid on and perform such contracts, provided the procedures of Section 8-13-700(B) are followed.

**QUESTION:**

The Santee-Lynches Private Industry Council has requested guidance on the following:

- (1) Clarification of Ethics Policy on service providers appointment to and active participation on Private Industry Council Board
- (2) Eligibility of board members/service providers to competitively bid on JTPA proposals within the Service Delivery Area (SDA) against other potential service providers.

**DISCUSSION:**

This opinion is rendered in response to a letter dated November 15, 1991 requesting an opinion from the State Ethics Commission. The Commission's jurisdiction is limited to the applicability of the State Ethics Act (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 does not address the issue of who may serve on public or private boards and commissions. However, in prior advisory opinions, the Commission has addressed actions to be taken by public members on matters affecting their economic interests, the interests of a member of their household, or a business or individual with which they are associated.

In Advisory Opinion SEC AO92-075, the Commission advised that a public member is required to provide a written statement describing any conflict of interests and then must not participate in any matter affecting his economic interests of \$50 or more. 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 SEC

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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(5) if he is a public member, he shall furnish a copy to the presiding officer 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 shall 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.

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.

The Board Members are prohibited from contracting with the council if they are authorized to perform any official function on a contract through writing or preparing specifications, acceptance of bids, award of the contract, or other action on the preparation or award of such contract, regardless of whether the provisions of Section 8-13-700 were followed. Absent such authorization to perform an official function regarding the contracts, board members are not prohibited from bidding on and performing contracts, provided that the requirements of Section 8-13-700(B) are followed.