

COMMISSIONERS
WILLIAM A. COATES, 4TH DISTRICT
CHAIRMAN
EMILY C. PHILLIPS, 2ND DISTRICT
VICE-CHAIRMAN



COMMISSIONERS
EDWARD E. DURYEY, 1ST DISTRICT
REV. DAVID L. TERRY, 3RD DISTRICT
RICHARD C. JONES, 5TH DISTRICT
C. A. HOUSEMAN, 6TH DISTRICT

State of South Carolina

State Ethics Commission

GARY R. BAKER
EXECUTIVE DIRECTOR

(803) 253-4192
FAX (803) 253-7539
5000 Thurmond Mall, Suite 111
P.O. Box 11926
Columbia, S.C. 29211

SEC AO92-164

March 25, 1992

SUBJECT: APPLICABILITY OF ETHICS REFORM ACT ON MEMBERS OF THE
STATE BOARD OF EXAMINERS FOR NURSING HOME
ADMINISTRATORS AND COMMUNITY RESIDENTIAL CARE FACILITY
ADMINISTRATORS

SUMMARY:

A residential care facility owner, and the spouse of another owner, who are also administrators would not be prohibited from serving on the State Board of Examiners for Nursing Home Administrators and Community Residential Care Facility Administrators, if such service is mandated by state statutes.

QUESTION:

The Research Director of the Senate Medical Affairs Committee questions whether (1) an owner of a residential care facility, and (2) the spouse of an owner of a residential care facility are prohibited by the Ethics Reform Act from serving as members of the State Board of Examiners for Nursing Home Administrators and Community Residential Care Facility Administrators.

DISCUSSION:

This opinion is rendered in response to a letter dated March 10, 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.

March 25, 1992

Section 40-35-20 provides in part as follows:

There is created the State Board of Examiners for Nursing Home Administrators and Community Residential Care Facility Administrators composed of nine members who must be appointed by the Governor, with the advice and consent of the Senate, for three-year terms and until their successors are appointed and qualify. Three must be qualified nursing home administrators duly licensed under this chapter, at least one of whom must be from a nonproprietary nursing home and one must be a qualified hospital administrator; three must be community residential care facility administrators, who after July 1, 1992, must be licensed under this chapter, at least one of whom must be a community residential care facility with ten or fewer residents; one must be a consumer, sponsor, or family member of a consumer of nursing home services; one must be a consumer, sponsor, or family member of a consumer of community residential care services; and one must be a voting member of the Long Term Care Council.

Section 8-13-730 provides in part as follows:

Unless otherwise provided by law, no person may serve as a member of a governmental regulatory agency that regulates any business with which that person is associated.

In accordance with Sections 8-13-730 and 40-35-20, the Commission advises that if the owner of a residential care facility, or the husband of an owner, is also an administrator of a residential care facility, and is appointed to fill one of the required administrator positions, service on the Board of Examiners would not be prohibited.

The Commission also calls attention to Sections 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

March 25, 1992

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;

* * *

(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 is to be noted in the minutes.

If allowed by authorizing statutes to serve on the Board, those members are required to follow the provisions of Section 8-13-700(B) on matters affecting their economic interests. 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.