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State Ethics Commission

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SEC AO92-168

June 9, 1992

SUBJECT: FILING OF ECONOMIC INTEREST BY COUNTY FORESTRY BOARD
MEMBERS

FORESTRY COMMISSION NOT A REGULATORY AGENCY

SUMMARY:

Members of county forestry boards are not required to file a Statement of Economic Interests. The Forestry Commission is not a regulatory agency or department for purposes of the Ethics Reform Act.

QUESTION:

The State Forester raises two questions concerning the applicability of the Ethics Reform Act to the Forestry Commission.

DISCUSSION:

This opinion is rendered in response to a letter dated March 13, 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.

June 9, 1992

(1) The Forestry Commission requests an opinion as to whether or not county forestry board members need to submit an economic interest form. Such boards are more than advisory in nature in that county employees can be employed, retained, or dismissed only with the consent of the county forestry board.

Section 8-13-1110(B) provides in part as follows:

(B) Each of the following public officials, public members, and public employees must file a statement of economic interests with the appropriate supervisory office, unless otherwise provided:

* * *

(11) a public member who serves on a state board, commission, or council;

Public member is defined in Section 8-13-100(26) as:

"Public member" means an individual appointed to a noncompensated part-time position on a board, commission, or council. A public member does not lose this status by receiving reimbursement of expenses or a per diem payment for services.

Section 8-13-1110(B)(11) requires the filing of the Statement of Economic Interests by members of state boards, commissions, or councils. The Commission advises that members of the county forestry boards are encompassed by the provisions of the Ethics Reform Act, however, for the purposes of this Act, they are not public members of a state board or commission and, thus, not required to file a Statement of Economic Interests.

(2) He questions whether the Forestry Commission is a "regulatory agency".

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.

Section 8-13-730 basically mirrors Section 8-13-450 of the previous Ethics Act. In S. C. Coastal Council et. al. v. S.C. State Ethics Commission, Op. No. 23496 (S.C. Sup. Ct. filed October 14, 1991), the Supreme Court examined whether Section 8-13-450 applied to members of the Coastal Council. The Court first reviewed in detail the Coastal Management Act (Act) and the regulations promulgated pursuant to that Act. See, S.C. Code

Ann. Section 48-39-10, et. seq., (1987) and 23 S.C. Code Ann. Reg. 30-2-11 and 12 (1976). The Court then held based on its reading of the above law that Coastal Council regulated the "use of critical areas by a business" but not the specific way a particular business is operated. Therefore, the issue pursuant to Section 8-13-730 is whether the Forestry Commission regulates the specific way a forester operates his business. From the facts as submitted, it does not appear that the Forestry Commission is a regulatory agency or department in terms of Section 8-13-730 of the Ethics Reform Act.