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State Ethics Commission

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SEC AO92-230

October 21, 1992

SUBJECT: VOTING BY MEMBERS OF ENERGY ADVISORY PANEL

SUMMARY:

If allowed by other statutes to serve, members of an Energy Advisory Committee would not be prohibited from taking actions which do not affect their economic interests to any greater extent than other members of the industry.

QUESTION:

A member of the House of Representatives has questioned whether members of an Energy Advisory Committee created to provide input to the State Energy Office may participate in committee actions. The State Energy Office would be a unit of the Budget and Control Board with members appointed by that Board with the exception of one member who would be appointed by the Governor. Of the 20 members of the Committee, half would be energy suppliers and half would represent energy consumers.

DISCUSSION:

This opinion is rendered in response to a letter dated May 18, 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.

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The State Ethics Act does not address the issue of who may serve on boards and commissions. If allowed by other statutes to serve, Section 8-13-700(B) provides for actions to be taken by the member. 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;

(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.

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

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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 SEC A092-064, 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 A092-155, the Commission advised that members of a city 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. If a particular matter would affect the economic interests to any greater extent than other members of the large class, the member would be required to abstain from all actions in accordance with Section 8-13-700(B).

Based upon the facts as submitted, the members of the Energy Advisory Committee would be able to participate in deliberations and votes on issues having general applicability to energy producers or consumers. However, on specific issues which may affect their economic interests to a greater extent than those of the industry, the provisions of Section 8-13-700(B) would apply.