

SUBJECT: COG DIRECTOR WITH LOAN FROM COG REVOLVING LOAN FUND

SUMMARY:

A COG Director who has an economic development loan with the Revolving Loan Fund is advised to follow the disclosure and disqualification procedures of Section 8-13-700(B) concerning the restructuring or modification of the loan.

QUESTION:

The Executive Director of the Santee-Lynches Regional Council of Governments has requested an opinion concerning a member of the Board of Directors. An associated corporation, the Regional Development Corporation, has a Revolving Loan Fund to fund economic development activities in the district. In 1989, a loan was made to a corporation owned by two individuals, one of whom is an elected county council member who serves on the COG Board and also as a member of the Regional Development Corporation. The loan is still in existence with loan payments still current. This Director has requested that the original loan be modified to allow him total ownership of the company and make such other changes as the RDC Board feels is necessary. He questions whether there is a conflict of interests or other ethics question to be addressed.

DISCUSSION:

This opinion is rendered in response to a letter dated November 8, 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., 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 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;

The Director would be prohibited from participating in official action regarding his loan with the Loan Fund and would instead be required to follow the above-quoted provisions.

The Commission notes Section 8-13-775 which 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.

Thus, the Director would be prohibited from having an economic interest in a contract if he is authorized to perform an official function. The Commission notes, however, that the loan in question has been in existence since 1989. Section 8 of the Ethics Reform Act of 1991 provides that "...this act governs only transactions which take place after December 31, 1991". Since the initial loan predates the statute, the Commission advises that the Director follow the procedure outlined in Section 8-13-700(B) in official actions concerning the loan.