

SUBJECT: ECONOMIC INTEREST DISCLOSURE REQUIREMENTS

SUMMARY:

Public members of statewide boards and commission are required to file a Statement of Economic Interests. All public members filing a Statement of Economic Interests shall report (1) business associations in which they have an ownership interest of 5% or more and \$100,000 or more, but not the amount of the ownership, (2) income received directly from governmental entities of \$500 or more, (3) the names of relationships to any known lobbyists or lobbyist principals as well as the purchase of goods or services of \$200 or more by a lobbyist or lobbyist principal, (4) members of bank or corporate boards who are otherwise required to file the Statement of Economic Interests, disclose their relationships with lobbyists and lobbyists principals, and (5) disclose amounts of income paid to the filer by contractors who also contract with the employee's agency. A filer would not be required to disclose a contract whereby a state agency provides services to the filer's business.

QUESTION:

The Executive Director of the State Board for Technical and Comprehensive Education has requested an opinion on several questions.

1. Does Section 8-13-1120 (A) (5) require anything more than a filer to disclose "the identity" of every business in which the filer, or a member of his immediate family, has an ownership interest of five percent and \$100,000.00?

2. Does Section 8-13-1120 (A) (2) apply to income paid by a State or local government to a company in which a filer may have an ownership interest or is employed, in that the filer may receive benefit indirectly either as a shareholder in dividends or in salary as an employee?

3. When a filer, or member of his immediately family, has an ownership interest in a business that may sell products or services to a lobbyist or a lobbyist principal, at what point should the filer be expected to have knowledge of such transactions? Should this knowledge only assign when the filer has direct involvement in the exchange of goods or services as evidenced by a signature on a contract, or something as tangible, indicating such contract? If such involvement is sufficient enough to require disclosure, is only the identify of the lobbyist principal required?

4. Would a filer, or member of his immediate family, who is a member of a bank

advisory board or a member of a corporate board (public or private) which is also a lobbyist's principal be required to file a statement of income received by virtue of that board

participation?

5. Would a company in which a member of our board is employed or a company owned in whole or in part by a member that receives training for its employees from any of the technical colleges or from the State Board's special schools program (pre-employment training) for new and expanding business and industry be subject to any reporting requirements, or action, under the Act?

6. Is a filer (State Tech Board Member) that is a salaried employee, yet exercise complete authority over the operations of a subsidiary of a lobbyist principal, required to report any compensation received from either the subsidiary or the parent company?

DISCUSSION:

This opinion is rendered in response to a letter dated December 16, 1991 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.

Section 8-13-1110(B)(11) provides:

(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.

Section 8-13-100(26) provides:

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

Members of the State Board of Technical and Comprehensive Education are required by this section to file a Statement of Economic Interests with information to be disclosed as provided by Section 8-13-1120.

Section 8-13-1120 (A)(5) provides:

(A) A statement of economic interests filed pursuant to Section 8-13-1110 must be on forms prescribed by the State Ethics Commission and must contain full and complete information concerning:

* * * *

(5) the identity of every business or entity in which the filer or a member of the filer's immediate family held or controlled, in the aggregate, securities or interests constituting five percent or more of the total issued and outstanding securities and interests which constitute a value of one hundred thousand dollars or more;

A filer must disclose if he or a member of his immediate family holds or controls securities or interests in a business or other entity which constitutes 5% or more of the total issued and outstanding stock and also constitutes a market value of \$100,000 or more. There exists no requirement to disclose the amount of such holding or interest, merely the fact that the filer or member of his immediate family has such an interest.

As to the second question, Section 8-13-1120(A)(2) provides:

(2) the source, type, and amount or value of income, not to include tax refunds, of substantial monetary value received from a governmental entity by a filer or a member of the filer's immediate family during the reporting period;

Income is defined in Section 8-13-100(19) as:

"Income" means the receipt or promise of any consideration, whether or not legally enforceable.

Substantial monetary value is defined in Section 8-13-100(29) as:

"Substantial monetary value" means a monetary value of five hundred dollars or more.

Thus, the filer is required to disclose the source, type, and amount of income of \$500 or more received directly by him or members of his immediate family from a governmental entity. Income received from a public agency by a business of which the filer is sole owner or proprietor must also be disclosed. It appears that only income paid directly to the filer or member of his immediate family is required, such as a salary and per diem which is not reimbursement for expenses.

With regard to the third question, Section 8-13-1130 provides

In addition to the Statement of economic interests required pursuant to Section 8-13-1110, a person required to file the statement shall further report to the appropriate supervisory office the name of any person he knows to be a lobbyist as defined in Section 2-17-10(13) or a

lobbyist's principal as defined in Section 2-17-10(14) and knows that the lobbyist or lobbyist's principal has in the previous calendar year purchased from the filer, a member of the filer's immediate family, an individual with whom the filer is associated, or a business with which the filer is associated, goods or services in an amount in excess of two hundred dollars.

This section requires knowledge of (1) a lobbyist or lobbyist principal, and (2) that such lobbyist or lobbyist principal has purchased goods or services in excess of \$200 from those identified persons or entities. There exist retail operations where such transactions are not known to the filer, such as a convenience store selling gasoline. An owner in such an operation would not necessarily come into routine contact with customers nor would records be maintained of cash transactions which, in the aggregate, may total more than \$200 in a calendar year. The State Ethics Commission would advise that those purchases which are evidenced by contracts known or readily ascertainable to the filer or in which the filer personally participated are within the knowledge of the filer and should be reported.

As to the fourth question, Section 8-13-710(A) provides:

(A) Unless provided by subsection (B) and in addition to the requirements of Chapter 17 of Title 2, a public official or public employee required to file a statement of economic interests under Section 8-13-1110 who accepts anything of value from a lobbyist's principal must report the value of anything received on his statement of economic interests pursuant to Section 8-13-1120(a)(9).

Thus, payment for service on a corporate board which is also a lobbyist principal is to be reported by a filer who is a public official or employee. No such reporting requirement exists for disclosing such income by a public member.

With regard to the fifth question, Section 8-13-1120(A)(8) provides:

if a public official, public member, or public employee receives compensation from an individual or business which contracts with the governmental entity with which the public official, public member, or public employee serves or is employed, the public official, public member, or public employee must report the name and address of that individual or business and the amount of compensation paid to the public official, public member, or public employee by that individual or business;

This requirement is intended to provide for disclosure of business contracts in which a business or individual is providing goods or services to a public agency. It does not appear that a filer is required to disclose transactions contracted to be provided by the public agency.

As to the sixth question, Section 8-13-1120(7) requires disclosure of:

- (7) the name of any lobbyist, as defined in Section 2-17-10(13) who is:
 - (a) an immediate family member of the filer;
 - (b) an individual with whom or business with which the filer or a member of the filer's immediate family is associated;

A public member must disclose his relationship to the lobbyist or lobbyist principal, however, a public member is not required to disclose the amount of any compensation received from a lobbyist principal.