

SUBJECT: PRIVATE ASSOCIATION DIRECTOR'S APPOINTMENT TO TAX ACCOMMODATIONS ADVISORY COMMITTEE

SUMMARY:

The Executive Director of a nonprofit organization would not be prohibited from serving on a Tax Accommodations Advisory Committee, however he is required to follow the disclosure and disqualification procedures of Section 8-13-700(B) on matters affecting the economic interests of that organization.

QUESTION:

The Executive Director of the Columbia Music Festival Association has recently been appointed to the Richland County Tax Accommodations Advisory Committee. The Association is a non-profit organization funded by the City of Columbia, Richland County, and ticket sales. Legislation creating the Advisory Committee specifically states that the arts be represented. The Director questions whether there is any conflict with his service on the Advisory Committee.

DISCUSSION:

This opinion is rendered in response to a letter dated July 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.

The State Ethics Commission knows of no provision of the Ethics Reform Act which would prohibit the Executive Director's involvement on the Tax Accommodations Advisory Committee.

The State Ethics Commission has advised in prior advisory opinions that a public member may contract with public agencies, including his own, providing the public member took no official action regarding such contract in accordance with Section 8-13-700(B) which provides that a public member is required to provide a written statement describing a conflict of interests and then must not participate in any matter affecting his economic interests of \$50 or more. 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.

Thus, on any matter requiring action by the Tax Accommodations Advisory Committee which would affect the economic interests of the Executive Director or the Columbia Music Festival Association, he would be required to follow the above section. 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.

The State Ethics Commission therefore advises that the Association would not be

prohibited from receiving funding from the Tax Accommodations Advisory Committee. However, the Director would be prohibited from participating in the contracting or funding process in accordance with Section 8-13-700 (B).