

SUBJECT: LOCAL HOUSING AUTHORITY BOARD MEMBER'S EMPLOYER DOING BUSINESS WITH THE BOARD

SUMMARY:

A bank employee may serve as a member of a local Housing Authority Board that maintains a banking relationship with the board member's employer, provided the member complies with the provisions of Section 8-13-700(B) on matters affecting his employer's economic interests. Pursuant to Section 8-13-775, the board member may not have an economic interest in a contract between the Board and the bank with which he is employed if he is authorized to perform an official function relating to the contract.

QUESTION:

An attorney representing both the City of Sumter and the Sumter Housing Authority requests an advisory opinion concerning the following situation. The Housing Authority Board is composed of citizens of Sumter who are appointed by City Council. An employee of one of the local banks has just completed serving an initial term on the Housing Authority Board and is up for reappointment. Historically, the Housing Authority has maintained a banking relationship with the local bank which employs the board member in question. The attorney inquires whether the Ethics Reform Act prohibits the bank employee from serving on the Housing Authority Board, or may such bank employee continue to serve as long as he complies with Section 8-13-700(B).

DISCUSSION:

This opinion is rendered in response to a letter dated January 4, 1993 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 8-13-700(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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(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, the Housing Authority Board Member must comply with the disclosure and disqualification provisions of Section 8-13-700(B) on matters requiring action by the Board which would affect the economic interests of the bank with which he is employed.

Section 8-13-100(11) provides as follows:

(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.

In accordance with this definition, the board member would not be prohibited from participating in official actions which would similarly affect all financial institutions. For example, the member could participate in deliberations concerning the requirements of a Housing Authority loan which is open for bid among all banks and savings and loans since all bidding financial institutions would be equally affected.

The State Ethics Commission also calls attention to Section 8-13-775, which provides as follows:

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.

In accordance with this section, the board member may not have an economic interest in a contract between the Board and the bank with which he is employed if he is authorized to perform an official function relating to the contract. Thus, the bank with which the board member is employed would be prohibited from contracting with the Sumter Housing Authority if the board member would derive an economic interest from a contract that he is authorized to perform any official function through writing or preparing specifications, acceptance of bids, award of the contract, or other action on the preparation or award of such contract, regardless of whether he followed the provisions of Section 8-13-700(B). Based strictly on the facts submitted, it does not appear that the board member, as a bank employee, obtains any economic interest by virtue of the banking relationship between the Board and his employer. Therefore, as long as he complies with Section 8-13-700(B) on matters requiring action by the Board which would affect the economic interests of the bank with which he is employed, the State Ethics Commission advises that the bank employee may continue to serve as a member of the Sumter Housing Authority Board since there is no economic interest involved.