

REVISED

SEC AO93-066

February 17, 1993

SUBJECT: FILING OF STATEMENT OF ECONOMIC INTERESTS BY ADVISORY BOARD MEMBERS

SUMMARY:

For the limited purpose of filing Statements of Economic Interests in accordance with Section 8-13-1110(B), members of the Heritage Trust Advisory Board are considered public members of a State board, commission, or council; however, members of the Marine Recreational Fisheries Advisory Board are not.

QUESTION:

The Deputy Chief Counsel for the SC Wildlife and Marine Resources Department questions whether members of the newly-created Marine Recreational Fisheries Advisory Board and the Heritage Trust Advisory Board are required to file Statements of Economic Interests.

DISCUSSION:

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

Section 8-13-1110(B) provides in part as follows:

(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;

Public member is defined in Section 8-13-100(26) as:

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

Section 8-13-1110(B)(11) requires the filing of Statements of Economic Interests by members of state boards, commissions, or councils. The State Ethics Commission notes that the Ethics Reform Act does not define the term "state board, commission, or council". Therefore, the Commission must carefully weigh a number of relevant factors in order to determine whether a particular board is a state board, commission, or council for the purpose of filing Statements of Economic Interests.

First, the Commission notes that both the Marine Recreational Fisheries Advisory Board and the Heritage Trust Advisory Board were created by State statute and operate pursuant to authority granted by the State of South Carolina. In addition, the actual scope of their authority must be considered in light of the General Assembly's intended purpose in requiring certain public members to disclose information concerning their economic interests. With respect to the Marine Recreational Fisheries Advisory Board, the Commission notes that this board's sole duty as set forth in Section 50-20-110, S.C. Code Ann., 1976, as amended, is "...to assist in prioritizing the expenditures of monies [benefiting marine recreational fishing] received in the special account." Accordingly, this board appears truly advisory in nature, and nothing in its enacting legislation suggests the authority to exercise sovereign power of the State with which its members could affect their economic interests. On the other hand, Section 51-17-60, S.C. Code Ann., 1976, as amended, bestows upon the Heritage Trust Advisory Board more significant duties and powers to include evaluating proposals necessary for the dedication of specific areas as Heritage Trust Preserves and recommending rules, regulations and other management criteria which the board feels would be beneficial in carrying out the purposes of the Heritage Trust Program. Thus, despite its name, the Heritage Trust Advisory Board appears to possess authority exceeding that normally conferred upon advisory boards.

Weighing all these factors, the State Ethics Commission believes that for the limited purpose of filing Statements of Economic Interests, "state board, commission, or council" shall mean an agency created by legislation which has statewide jurisdiction and which exercises some of the sovereign power of the State. The Commission therefore advises that members of the Heritage Trust Advisory Board are considered public members of a state board, commission, or council; however, the members of the Marine Recreational Fisheries Advisory Board are not.