

SUBJECT: OFFICER AND SHAREHOLDER IN STATE AQUACULTURE OPERATION SERVING ON WILDLIFE AND MARINE RESOURCES DEPARTMENT LAW ENFORCEMENT ADVISORY BOARD

SUMMARY:

An officer and shareholder in a South Carolina aquaculture operation is not prohibited from serving on the Wildlife and Marine Resources Department Law Enforcement Advisory Board; however, the member would be required to comply with the provisions of Section 8-13-700(B) on any board action or decision which would affect his company's economic interests.

QUESTION:

The Deputy Chief Counsel for the South Carolina Wildlife and Marine Resources Department (SCWMRD) inquires whether an officer and shareholder in a Richland County based aquaculture operation may continue to serve on the Department's Law Enforcement Advisory Board. Aquaculture operations are regulated by the Department's Wildlife and Freshwater Fisheries Division which has its own advisory board. Naturally, enforcement is accomplished through the Department's Law Enforcement Division, and aquaculture facilities are from time to time inspected by law enforcement personnel for violations.

DISCUSSION:

This opinion is rendered in response to a letter dated March 11, 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.

The State Ethics Commission knows of no reason why the member in question may not continue to serve on the SCWMRD Law Enforcement Advisory Board. In previous opinions, the Commission has advised that the Ethics Reform Act does not address the issue of who may serve on boards and commissions. Instead, Section 8-13-700(B) requires that in the event of a conflict of interest, a public member must recuse himself from participating in certain governmental actions or decisions. 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.

Economic Interest is defined in Section 8-13-100(11) as follows:

(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 prior advisory opinions, the State Ethics Commission advises that the member in question is not prohibited from serving on the SCWMRD Law Enforcement Advisory Board. However, in the event that the board member would be required to participate in a governmental decision which affects his company's economic interests, he must comply with the provisions of Section 8-13-700(B).