

SUBJECT: EMPLOYER OF COUNTY SCHOOL BOARD CHAIRMAN DOING BUSINESS WITH THE COUNTY

SUMMARY:

Provided he complies with the recusal provisions of Section 8-13-700(B) on those matters affecting his employer's economic interests, a bank employee may continue to serve as School Board Chairman even though the county does business with the Chairman's employer. Pursuant to Section 8-13-775, the Chairman may not have an economic interest in a contract between the County and the bank with which he is employed if he is authorized to perform an official function relating to the contract.

QUESTION:

The Chairman of the Newberry County School Board is currently an Executive Vice-President, Director, cashier and stockholder with Midlands National Bank. A few elementary and high schools within the Newberry County School District maintain small checking accounts and certificates of deposit with Midlands National Bank; however, the Chairman neither solicited these accounts nor has he dealt personally with school personnel regarding these accounts. Pursuant to a competitive bid procedure, the Newberry County Treasurer secured two certificates of deposit with Midlands National Bank totaling 1.4 million dollars. These funds represent funds of both the County and the School District; however, because the County Treasurer handles all investments for the County without the School Board's participation, the Chairman has no way of knowing precisely whose money this is. Also, the Chairman does not set the interest rates which the bank bids on the County's deposits. In addition to the certificates of deposit with Midlands National Bank, the County has significant deposits with at least two other banks in Newberry County.

The Newberry County School District recently issued 2.4 million dollars in bonds under the 8% debt limit to be repaid in one year. A newly formed citizens' group, "We the People of Newberry County", requests that the School Board apply one million dollars from the general fund balance toward the 8% bonds, thereby reducing the millage required to retire these bonds. This group contends that the Chairman should abstain from participating in this decision since the necessary funds possibly could come out the CD's with Midlands National Bank. The Chairman requests an advisory opinion not only regarding this specific issue, but also whether Midlands National Bank may continue to bid on County deposits.

DISCUSSION:

This opinion is rendered in response to a letter dated June 23, 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.

In previous opinions, the State Ethics 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 official 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;

* * * *

(4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy to the presiding officer of the governing body 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 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 the disqualification and the reasons for it to be noted in the minutes.

"Business", as defined in Section 8-13-100(3), "means a corporation, partnership, proprietorship, firm, an enterprise, a franchise, an association [or] organization...." "Business with which he is associated" is defined in Section 8-13-100(4) as "a business of which the person ...is a director, an officer, owner, employee [or] a compensated agent...." Accordingly, the State Ethics Commission advises that Midlands National Bank is a business with which the School Board Chairman is associated, and he must comply with the recusal provisions of Section 8-13-700(B) on matters requiring action by the Board which would affect the bank's economic interests. Therefore, in determining whether or not the Chairman may participate in this particular School Board decision, the paramount question is whether reducing the School District's general fund balance would affect the economic interests of Midlands National Bank.

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 an earlier advisory opinion citing this definition, the State Ethics Commission concluded that a member of the Sumter Housing Authority who was employed by a bank doing business with the Authority could participate in official actions which would similarly affect all financial institutions. SEC AO93-062 (January 20, 1993). In the instant situation, the Chairman could participate in deliberations concerning the requirements of a School District investment for which bids will be sought since all bidding financial institutions would be equally affected. However, according to the facts submitted, the Newberry County Treasurer, not the School Board, is responsible for investing county funds. Moreover, the facts indicate that the only question before the School Board is whether to use proceeds from the general fund balance to pay these bonds. If approved, it appears that the County Treasurer will designate the specific funds to apply toward the bonds. Since the county's certificates of deposit with Midlands National Bank are only one potential source with which the County Treasurer could pay these bonds, the argument that the School Board's decision will inevitably affect the economic interests of Midlands National Bank is purely speculative. For this reason, the State Ethics Commission advises that the Chairman may participate in the School Board decision concerning the use of one million dollars from the general fund balance to satisfy the recently issued bonds.

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 code section, the Chairman may not have an economic interest in a

contract between the County and Midlands National Bank if he is authorized to perform an official function relating to the contract. However, based strictly on the facts submitted, it does not appear that the School Board Chairman is authorized to perform official contractual functions regarding Newberry County deposits. Therefore, as long as he complies with Section 8-13-700(B) on matters requiring action by the School Board which would affect the economic interests of Midlands National Bank, the State Ethics Commission advises that Midlands National Bank may continue to bid competitively for county deposits as they become available.