

SEC AO2008-001

September 19, 2007

SUBJECT: A LOCAL CONSERVATION DISTRICT EMPLOYEE BEING APPOINTED OR ELECTED AS A LOCAL CONSERVATION DISTRICT COMMISSIONER.

SUMMARY: A local conservation employee is not specifically prohibited from being elected or appointed to the local conservation district board but must follow the procedures of Section 8-13-700(B) when required to take actions regarding his position.

QUESTION: Whether employees of the local Conservation District may hold seats as District board members? These recommendations for appointment are forwarded by the local district board to the South Carolina Department of Natural Resources (SCDNR) Land, Water and Conservation Districts Advisory Committee, with their recommendation being acted on by the SCDNR Board.

DISCUSSION:

This opinion is rendered in response to a letter dated February 12, 2007 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 Ethics Reform Act does not specifically prohibit a person from being employed by the same agency on whose board he serves. In prior advisory opinions, however, the State Ethics Commission has advised that such service in both a master-servant relationship creates some inherent conflicts.

Section 8-13-735 provides:

No person who serves at the same time on:

- (1) the governing body of a state, county, municipal, or political subdivision board or commission, and
- (2) as an employee of the same board or commission or serves in a position which is subject to the control of that board or commission may make or participate in making a decision which affects his economic interests.

Further, Section 8-13-700(B) provides:

(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 of the statement 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;

* * *

- (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.

In prior advisory opinions, the State Ethics Commission has advised that any person serving in two public capacities should follow the procedures outlined in Section 8-13-700(B) whenever required to take action in one position affecting the other position.

CONCLUSION: Accordingly, a local conservation district employee would not be prohibited from

serving on the conservation district board either as an appointed member or an elected member; however, he is advised to follow the provisions of Section 8-13-700(B) on actions affecting his economic interest.

KEY WORDS: economic interests, conflict of interest

ANNOTATIONS: 8-13-700(B), 8-13-735