

SUBJECT: TOURISM COMMISSION MEMBER AS TOUR OPERATOR

SUMMARY: A regional tourism commission member would be prohibited from participating in a tourism program if she has to perform an official function regarding the program. If not authorized to perform an official function, she is advised to follow the provisions of Section 8-13-700(B) when required to take action or make decisions regarding her participation in the program.

QUESTION: The Executive Director of the Lowcountry & Resort Islands Tourism Commission requests an opinion concerning a commissioner's involvement in a project. The Commission will be marketing to motor coach operators to solicit bus tours. An individual or organization is usually required to act as a "receptive operator". That receptive operator makes arrangements for the actual tour, i.e., restaurants and accommodations, special tours, step on guide services, etc. That person usually charges the motor coach operator a fee per passenger. Initially, the Commission will act as the receptive operator, then turn the operation over to a private individual. One of the commissioners is interested in becoming the receptive operator as an income generating business. The Director questions whether this commissioner should refrain from voting or taking any other board action on this project or whether the commissioner should resign prior to beginning work as the receptive operator.

DISCUSSION:

This opinion is rendered in response to a letter dated April 7, 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 8-13-775 provides:

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.

The Commissioner is prohibited from participating in the program if she is authorized to perform any official function on the contract 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 she followed the provisions of Section 8-13-700. The State Ethics Commission notes the provisions of Section 8-13-700(B) which 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, if the Commissioner is not prohibited by Section 8-13-775 from having an interest in the project, the Commissioner would be required to follow the provisions of Section 8-13-700(B) on issues affecting her participation in the program.