

SUBJECT: AGENCY HEAD SERVING ON ASSOCIATION BOARD

SUMMARY: A public employee is not prohibited from serving on the board of a trade association in accordance with the off-duty employment guidelines.

QUESTION: The President of the Wireless Cable Association, Inc. requests an opinion concerning the creation of a national advisory committee. The Educational Advisory Committee is strictly an advisory group to assist wireless cable operators to better develop programming curriculum to be distributed on wireless systems throughout the country. FCC regulations obligate users of the twenty instructional television channels to program each of those channels a minimum of four hours per day, five days per week. The Association is therefore vitally interested in developing better educational programming channels to market to consumers in partnership with educators. The Association would like to invite the President of SC ETV to serve as a member of the Educational Advisory Committee due to his experience and knowledge. The Association President notes that the Association is a tax-exempt trade association and does not employ any lobbyists in South Carolina.

DISCUSSION:

This opinion is rendered in response to a letter dated April 24, 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.

There is no outright prohibition against a public employee serving on the Board of Directors of a publicly held company, corporation, or organization. In prior advisory opinions, the State Ethics Commission has advised that a public employee may engage in outside employment consistent with established guidelines: (1) that no public materials or equipment are utilized, except as provided by Section 8-13-700(A), (2) such work is engaged in on the employee's own time, (3) the work does not interfere with the needs of the agency, and (4) the public position is not utilized to obtain or continue the employment.

A public employee who is required to file a Statement of Economic Interests must disclose on the Statement of Economic Interests in accordance with Section 8-13-1120(A)(8) any compensation received from a business which also has a contract with the governmental entity with which the public employee serves.

- (A) A statement of economic interests filed pursuant to Section 8-13-1110 must be on forms prescribed by the State Ethics Commission and must

contain full and complete information concerning:

- (8) if a public official, public member, or public employee receives compensation from an individual or business which contracts with the governmental entity with which the public official, public member, or public employee serves or is employed, the public official, public member, or public employee must report the name and address of that individual or business and the amount of compensation paid to the public official, public member, or public employee by that individual or business;

The employee is reminded that, if required to take action as a public employee which will affect the economic interests of the Association, he follow the procedures 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;

* * *

- (3) if he is a public employee, he shall furnish a copy of the statement to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he shall take the action prescribed by the State Ethics Commission;

The State Ethics Commission further calls attention to the provisions of 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.

A public employee is advised that the Association is not precluded from contracting with ETV if the official functions are not authorized to be performed by the public employee. He is further advised to follow the provisions of Section 8-13-700(B) on matters requiring his action which affect such contracts.