

SUBJECT: ABC CHAIRMAN NOT PRECLUDED FROM HEARING CASES WHEN ONE OF THE PARTIES IS REPRESENTED BY THE LAW FIRM IN WHICH CHAIRMAN'S BROTHER IS A PARTNER

SUMMARY:

The Chairman of the Alcoholic Beverage Control Commission, whose brother is a partner in a law firm, may participate in contested matters before the Commission even though one of the parties is represented by his brother's law firm.

QUESTION:

The Chairman of the Alcoholic Beverage Control Commission questions whether he may hear and decide contested matters when one of the parties is represented by the law firm in which his brother is a partner.

DISCUSSION:

This opinion is rendered in response to a letter dated August 26, 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 8-13-700(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;

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(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;

Section 8-13-100(18) provides as follows:

(18) 'Immediate family' means:

(a) a child residing in a candidate's, public official's, public member's, or public employee's household;

(b) a spouse of a candidate, public official, public member, or public employee; or

(c) an individual claimed by the candidate, public official, public member, or public employee or the candidate's, public official's, public member's, or public employee's spouse as a dependent for income tax purposes.

Thus, since one's brother is not included within the definition of 'immediate family', Section 8-13-700 does not prohibit the Chairman's participation in those cases where his brother's law firm represents one of the parties before the ABC Commission. Nevertheless, from the facts submitted, it appears that the State Ethics Commission also advises that this matter involves legal canons of ethics, therefore, the Bar Association's Ethics Advisory Committee should be contacted.