

SUBJECT: SCHOOL BOARD MEMBER SERVING AS PRESIDENT OF ASSOCIATION
SUING THE BOARD PARTICIPATING IN MEETINGS BETWEEN THE
BOARD AND ITS LEGAL COUNSEL

SUMMARY:

Although the President of the Florence Chapter of the NAACP is not prohibited from serving on the Board of Trustees for Florence School District One, he is required to comply with the recusal provisions of Section 8-13-700(B) regarding participation in matters related to the defense or settlement of the Association's lawsuit against Florence School District One.

QUESTION:

The Florence Branch of the NAACP is suing the Superintendent of Florence School District One and the nine individual members of the School Board in their official capacities. The President of the Florence Chapter of the NAACP is also a member of the School Board. The School District's attorney inquires whether this particular member of the School Board may participate in meetings between the Board and its legal counsel. Such meetings require discussing the strengths and weaknesses of the case as well as how to conduct the best possible defense of the case. Although the Plaintiffs are not requesting monetary damages, they have requested the payment of attorney's fees and court costs.

DISCUSSION:

This opinion is rendered in response to a letter dated May 14, 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 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;

"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...." Therefore, for the purposes of Section 8-13-700(B), the State Ethics Commission advises that the Florence Chapter of the NAACP is a business with which the President/School Board member is associated.

Economic Interest is defined in Section 8-13-100(11) as:

(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.

Based on previous advisory opinions, the State Ethics Commission advises that the President of the Florence Chapter of the NAACP is not prohibited from serving on the Florence School District One Board of Trustees. Nevertheless, the member is required to comply with the recusal provisions of Section 8-13-700(B) on matters requiring action by the School Board which would affect the economic interests of the Florence Chapter of the NAACP. Therefore, in determining whether the member may participate in meetings between the School Board and its attorney, the paramount question is whether such meetings would affect the economic interests of the Florence Chapter of the NAACP.

According to the facts presented, the purpose of these meetings is to discuss the merits of the lawsuit in connection with developing the School Board's legal defense. Because the resulting decisions would most likely affect the Plaintiff's economic interests in regard to the lawsuit, the State Ethics Commission advises that the School Board member/Association President should neither attend nor

participate in official deliberations, actions or decisions of the School Board related to the defense or settlement of the pending lawsuit between the Florence Chapter of the NAACP and Florence School District One.