

SEC AO2002-003

November 14, 2001

SUBJECT: ECONOMIC INTEREST

SUMMARY: The economic interest of an immediate family member, an individual with whom associated and a business with which associated is imputed to the public official, public member, and public employee for purposes of Section 8-13-700, etal.

QUESTION: Having noted the inconsistencies between Section 8-13-100(11) and Section 8-13-700 and Section 8-13-725 the Commission issues an Advisory Opinion on whether the economic interest of an immediate family, an individual with whom associated and a business with which associated is imputed to the public official, public member, and public employee for purposes of Section 8-13-700, etal.

DISCUSSION: The State Ethics 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 2-17-5 et seq. and Section 8-13-100 et seq., as amended, 1976 Code of Laws of South Carolina). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. Failure to disclose relevant information may void the opinion.

Section 8-13-700 provides in part:

(A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public

member's, or public employee's use which does not result in additional public expense.

(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;

Section 8-13-725 provides in part:

(A) No public official, public member, or public employee may use or disclose confidential information gained in the course of or by reason of his official responsibilities in any way that would affect an economic interest held by himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated.

A public official, public member, or public employee (hereinafter "public official") may not knowingly use his office to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated or a business with which he is associated. Additionally, a public official may not make, participate in making, or in any way attempt to use his office 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. Finally, a public official may not use or disclose confidential information that would affect the 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. However, the definition of economic interest found at Section 8-13-100(11)(a) states it is "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." (emphasis added). The definition does not include any reference to an immediate family member, an individual with whom associated or a business with which associated.

The practice of the Commission, as well as the legislative ethics committees, has been to impute the economic interest of “a member of his immediate family, an individual with whom he is associated, or a business with which he is associated” to the public official. If the economic interest of those covered relationships is not imputed to the public official, then the inclusion of those individuals and entities in Sections 8-13-700 (A), 700(B) and 725 would be meaningless.

CONCLUSION: The economic interest of an immediate family member, an individual with whom associated and a business with which associated is imputed to the public official, public member, and public employee for purposes of Section 8-13-700, etal.

KEY WORDS: economic interest, immediate family member, individual with whom associated, business with which associated

ANNOTATIONS: 8-13-100(11), 8-13-700(A), 8-13-700(B) and 8-13-725
