

SEC AO2003-004

September 18, 2002

**SUBJECT:** PUBLIC MEMBER LEASING PROPERTY FROM HIS PUBLIC ENTITY

**SUMMARY:** A public member who wishes to lease property from his public entity must recuse himself from taking any official action in the negotiations of the lease or in related matters. As a public member, he may not use his membership to obtain a more advantageous lease arrangement.

**QUESTION:** A public member of the Charleston County Aviation Authority began the process of entering into a lease of land at an area airport prior to being appointed to the Authority. The question is whether it would be consistent with South Carolina Law for the public member to lease the subject property from the Authority?

**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(A) provides:

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.

Section 8-13-700(B) provides in part:

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.

Section 8-13-100(11) defines economic interest as:

(11)(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.

(b) This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or

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public employee is incidental to the public official's, public member's, or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

A public member may not knowingly use his official membership to obtain an economic interest for himself. Section 8-13-700(A). In addition, no public member may make, participate in making, or in any way use his position to influence a government decision in which he has an economic interest. Section 8-13-700(B). By definition, a public member has an economic interest in leasing property from the public entity on which he serves. Section 8-13-100(11)(a).

In the facts presented, the public member began the lease negotiations prior to being appointed to the Authority. Notwithstanding when the negotiations began, in order for the public member to lease property from the Authority, he must recuse himself from taking any official action in the negotiations. As a public member, he may not use his membership to obtain a more advantageous lease arrangement. If his lease is dependent on actions to be taken in a related matter, then the public member must also recuse himself in the related matter.

**CONCLUSION:** A public member who wishes to lease property from his public entity must recuse himself from taking any official action in the negotiations of the lease or in related matters. As a public member, he may not use his membership to obtain a more advantageous lease arrangement.

<b>KEY WORDS:</b> economic interest
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<b>ANNOTATIONS:</b> 8-13-100(11), 8-13-700(A) and 8-13-700(B)
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