

SEC AO2007-010

May 16, 2007

SUBJECT: UNIVERSITY PRESIDENT SERVING ON THE BOARD OF A PUBLICLY-TRADED COMPANY

SUMMARY:

A state university president would not be prohibited from serving on the board of a publicly-traded company; however, he is advised to follow the provisions of Section 8-13-700(B) on actions affecting the economic interest of the company.

QUESTION:

May the president of a state university serve on the board of a publicly-traded company?

DISCUSSION:

This opinion is rendered in response to a letter dated February 12, 2007 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.

The Ethics Reform Act does not prohibit a public official, such as a state university president, from serving on the board of a publicly-traded company; however, the president is advised of the provisions of Section 8-13-700(B) which provides in part:

(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 provides in part:

(3) 'Business' means a corporation, partnership, proprietorship, firm, an enterprise, a franchise, an association, organization, or a self-employed individual.

(4) 'Business with which he is associated' means a business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

(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 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.

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Thus, a state university president is advised to follow the recusal procedures in Section 8-13-700(B) on matters affecting the economic interest of the publicly-traded company, a business with which he is associated by definition.

CONCLUSION: Accordingly, a state university president would not be prohibited from serving on the board of a publicly-traded company; however, he is advised to follow the provisions of Section 8-13-700(B) on actions affecting the economic interest of the company.

KEY WORDS: Business With Which Associated, Economic Interest, Publicly-Traded Company

ANNOTATIONS: 8-13-100(3)(4) and (11), 8-13-700(B)