

State of South Carolina

State Ethics Commission

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SEC AO2025-001

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SUBJECT: SCHOOL BOARD PAY INCREASES

SUMMARY: Absent a specific statute providing otherwise, S.C. Code Ann. § 8-13-700 prohibits a school board member from voting to approve an in-term pay increase¹ for himself for the duration of his present term.

APPLICABLE LAW:

Section 8-13-700 provides, in relevant 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 family member, 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 that 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 family member, 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

¹ The Commission notes that there are numerous opinions of the South Carolina Attorney General that deal specifically with the type of payments school board members may accept (i.e., per diem, mileage, salary, stipend, etc.). See Op. Atty. Gen. (Horton, October 5, 1979); Op. Atty. Gen. (Fleming, August 15, 1997); Op. Atty. Gen. (Matthews, September 22, 1997); Op. Atty. Gen. (Maynor, March 10, 2008). The Commission's jurisdiction is limited to the enforcement of the Ethics Act and it therefore makes no finding about the types of payments Board members may receive. Instead, it finds that any payment, whether classified as a per diem, salary, stipend, or by some other name, triggers S.C. Code Ann. § 8-13-700 in the absence of another more specific statute.

responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a family member, 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 an agency, commission, board, or of a 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(11) defines “economic interest,” as:

- (a) ... 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.

DISCUSSION:

The State Ethics Commission’s jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (the “Ethics Reform Act”). 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.

The Board of Trustees (Board) of Anderson County School District Five (District) has expressed interest in paying its Board members \$300.00 per month and its Board chair \$350.00 per month. With S.C. Code Ann. § 8-13-700 in mind, the Board asks whether such payments

could begin immediately following Board action² or whether such payments could only take place following an election. As explained herein, absent a specific statute providing otherwise, S.C. Code Ann. § 8-13-700 prohibits a school board member from voting to approve an in-term pay increase for himself for the duration of his present term.

At the outset, the Commission calls attention to S.C. Code Ann. § 4-9-100 and S.C. Code Ann. § 5-7-170, which permit the members of a municipal council or county council to increase their pay provided the increase does not take effect until after the election or re-election of at least two (2) council members.³ Although S.C. Code Ann. § 59-1-350 allows school board members to receive per diem, mileage, and actual expenses, there is no similar language regarding school board members as to when such payments may occur or increase. The Commission also notes that the legislature has specifically set the amount of payment for board members in certain districts and/or counties. However, it does not appear that it has done so for this particular District, which means the amount of “payments provided by S.C. Code Ann. § 59-1-350 are to be set by the school districts.” Op. Atty. Gen. (Fleming, August 15, 1997). The question for the Commission is therefore *how* the Board may adjust the board member pay in accordance with the Ethics Act.

S.C. Code Ann. § 8-13-700 prohibits public officials, such as school board members, from participating in or voting on any matter in which they have an economic interest. Pursuant to S.C. Code Ann. § 8-13-100(11), an economic interest is generally defined as a financial interest of fifty (50) dollars or more. Here, the Commission finds that a monthly payment of \$300.00 or \$350.00 received by a school board member constitutes an economic interest.

While specific statutes exist allowing counties and municipalities to effectuate a pay increase following the election of only two (2) council members, no such provision exists for school boards. Accordingly, the Commission finds that, absent a specific statute providing otherwise, S.C. Code Ann. § 8-13-700 prohibits a school board member from approving an in-term pay increase for himself for the duration of his present term. See Greenwood County Council v. Brooks, 362 S.C. 500, 608 S.E.2d 872 (2005) (“ . . . increases should be enacted for the benefit of the office and not for the immediate benefit of the particular person holding that office.”). Stated another way, a school board member may only approve a change in pay for his office if the change is effective following an election for that particular board member’s seat.

² In this instance, it appears a Board policy must be amended to effectuate such a change.

³ S.C. Code Ann. § 4-9-100 provides, in relevant part, “. . . council may by ordinance adjust the salary but the ordinance changing the salary is not effective until the date of commencement of terms of at least two members of council elected at the next general election following the enactment of the ordinance affecting the salary changes at which time it will become effective for all members.” S.C. Code Ann. § 5-7-170 provides, in relevant part, “. . . an ordinance establishing or increasing such salaries shall not become effective until the commencement date of the terms of two or more members elected at the next general election following the adoption of the ordinance, at which time it will become effective for all members whether or not they were elected in such election.”