

SUBJECT: ETV COMMISSION MEMBER INVESTING IN WIRELESS CABLE COMPANY

SUMMARY:

An ETV Commission member is not prohibited from investing in a company which may negotiate with the Commission, provided that, in accordance with Section 8-13-775, he is not authorized to perform an official function regarding the contract. Also, the member is advised of the provisions of Section 8-13-700(B) concerning recusal when required to take official actions which affect the economic interests of the company.

QUESTION:

A member of the Educational Television Commission has been approached to invest in a wireless cable company. That company will use frequencies to transmit programming which is now transmitted locally by coaxial cable. In order to complete the full service plan, there will likely be negotiations with the local TEC and ETV to use their respective ITFS frequencies when not being used by those agencies. There is a possibility of an offer by the company of some facility enhancement in exchange for the use of their facilities. He questions whether there is a conflict in his involvement in the investment.

DISCUSSION:

This opinion is rendered in response to a letter dated November 30, 1992 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.

There does not appear to be any prohibition against the ETV Commission member investing in the wireless cable company since there is no regulatory function provided by ETV over such a company. The Commissioner is advised of the provisions of Section 8-13-700(B) which provides that a public member is required to provide a written statement describing a conflict of interests and then must not participate in any matter affecting his economic interests or those of a business with which he is associated of \$50 or more. 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;

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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.

The State Ethics Commission advises that the company in which the Commissioner may invest would not be prohibited from negotiating for the use of ETV frequencies or facilities; however, if the

Commissioner is required to take action in his official capacity which affects the economic interests of the company, he is advised to comply with the disclosure and disqualification procedure of Section 8-13-700(B).

The State Ethics Commission notes, however, that Section 8-13-775 provides:

A public official, public member, or public employee may not have an economic interest in a contract with the State or its political subdivisions if the public official, public member, or public employee is authorized to perform an official function relating to the contract. Official function means writing or preparing the contract specifications, acceptance of bids, award of the contract, or other action on the preparation or award of such contract. This section is not intended to infringe on or prohibit public employment contracts with this State or a political subdivision of this State.

Accordingly, the ETV Commission member would be prohibited from contracting with South Carolina ETV if he is authorized to perform an official function as set forth in Section 8-13-775, regardless of whether the provisions of Section 8-13-700 were followed. Absent the authorization to perform an official function regarding the contract, the member is not prohibited from contracting with South Carolina ETV, provided he complies with the requirements of Section 8-13-700(B).