

SUBJECT: COUNTY EMPLOYEE SERVING ON COUNTY TRANSPORTATION COMMITTEE

SUMMARY:

A county road supervisor would not be prohibited from serving on a county transportation committee; however, should the transportation committee be required to take an action that distinctly affects his own or the county's economic interests, the road supervisor may be required to comply with the recusal provisions of Section 8-13-700(B).

QUESTION:

A member of Barnwell County Council requests an advisory opinion concerning the appointment of a full time county road supervisor to the Barnwell County Transportation Committee. As a county employee, the road supervisor receives job directions concerning road work from the Public Works Director, the County Administrator and county council. As a member of the Barnwell County Transportation Committee, the road supervisor would participate in the administration of certain highway funds allocated to the county in accordance with a state formula. Accordingly, the county council member inquires whether this appointment creates a conflict of interest since the road supervisor is a paid county employee and has the authority to oversee the road crew.

DISCUSSION:

This opinion is rendered in response to a letter dated September 17, 1993 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 State Ethics Commission knows of no reason why a county road supervisor could not be appointed to serve on a county transportation committee. In previous opinions, the Commission has advised that the Ethics Reform Act does not address the issue of who may serve on boards and commissions. Instead, Section 8-13-700(B) requires that, in the event of a conflict of interest, a public official, public member or public employee must recuse himself from participating in certain governmental actions or decisions. 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;

* * *

(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.

According to Section 8-13-100(3) and (4), "'Business' means a corporation, partnership, proprietorship, firm, an enterprise, a franchise, an association [or] organization...." "'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 [or] employee...." For the purposes of Section 8-13-700(B), the State Ethics Commission has previously advised that a public employee's government employer be considered a business with which the employee is associated.

"Economic Interest" is defined in Section 8-13-100(11) 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 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.

Based on the facts presented, the county transportation committee appears responsible for administering funds that have already been allocated to the county pursuant to a formula established by

the General Assembly. For this reason, the road supervisor's appointment to the transportation committee does not appear to affect either his own or Barnwell County's economic interests to any greater or lesser extent. Thus, in accordance with prior advisory opinions, the State Ethics Commission advises that the county road supervisor is not prohibited from serving on the Barnwell County Transportation Committee. However, should the transportation committee be required to take an action that distinctly affects his own or the county's economic interests, the road supervisor may be required to comply with the recusal provisions of Section 8-13-700(B).