

SUBJECT: DISCLOSURE OF ECONOMIC INTERESTS

SUMMARY:

A person required to file a Statement of Economic Interests must disclose, among other things: (1) income received directly from a governmental entity, (2) real estate interests where public improvements of \$200 or more have been made, and (3) interests in pension funds, stock portfolios, or other retirement funds which constitute a value of 5% or more of the total issues and also is valued at \$100,000 or more.

QUESTION:

A member of the Board of Architectural Examiners requests an advisory opinion concerning the reporting requirements on behalf of himself and his law partner who is a member of the Commissioners of Pilotage. He questions:

1. Item 13, Income and Benefits. Is this necessary to list all of the IRF payments to our firm, as they are independently listed and we do not receive them personally?
2. Item 15, Real Estate Interests. Of course, we own residences, and I would imagine that there are "public improvements of \$200.00 or more, although I cannot be certain. Does this encompass streets and sidewalks?

Do we have to list personal residence and values on this even though it is in no way regulated by the State and there is no conflict of interest?

3. Item 17, Business Interest. What is this limited to? Is this limited to a controlling business interest, or is this interests constituting a value of more than \$100,000.00. In other words, would this require disclosure of pension funds, stock portfolios, and other retirement funds unrelated to any business?

DISCUSSION:

This opinion is rendered in response to a letter dated January 7, 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.

Section 8-13-1120 provides in part as follows:

(A) A statement of economic interests filed pursuant to Section 8-13-1110 must be on forms prescribed by the State Ethics Commission and must contain full and complete information concerning:

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(2) the source, type, and amount of value of income, not to include tax refunds, of substantial monetary value received from a governmental entity by the filer or a member of the filer's immediate family during the reporting period;

(3)(a) the description, value, and location of all real property owned and options to purchase real property during the reporting period by a filer or a member of the filer's immediate family if:

(i) there have been any public improvements of more than two hundred dollars on or adjacent to the real property within the reporting period and the public improvements are known to the filer; or

(ii) the interest can reasonably be expected to be the subject of a conflict of interest; or

(b) if the sale, lease, or rental of real property is to a state, county, or municipal instrumentality of government, a copy of the contract, lease, or rental agreement must be attached to the statement of economic interests; or

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(5) the identity of every business or entity in which the filer or a member of the filer's immediate family held or controlled, in the aggregate, securities or interests constituting five percent or more of the total issued and outstanding securities and interests which constitute a value of one hundred thousand dollars or more;

As to the first question, Section 8-13-1120(A)(2) provides for disclosure of income received from a governmental entity by the filer or a member of the filer's immediate family. Income received by a law firm from governmental agencies is not required to be disclosed in Item 13 of the Statement of Economic Interests.

As to the second question, Section 8-13-1120(A)(3) requires disclosure of real estate interests, including residences, on which there have been public improvements of more than \$200 in value during the prior calendar year. The real estate interests must be those which are the filer's or those of the filer's immediate family. Public improvements would encompass those which would enhance the market value after the installation of the improvement. Those improvements to be reported would be those which are added, not merely upgrades or replacements. Thus, pavement of streets, installation

of sidewalks, and water or sewer installation property must be disclosed. Merely repaving or resurfacing a road or sidewalk would probably not increase the market value. The value of such real property including residences must be disclosed if there are such reportable public improvements, if there is a conflict of interest, or if the property has been sold, leased, or rented to a public agency.

With regard to the third question, Section 8-13-1120(A)(5) requires disclosure of every business or entity in which the filer or member of the immediate family held or controlled securities or interests constituting five percent or more of the total issued and outstanding securities and interests which constitute a value of one hundred thousand dollars or more. This requirement includes disclosure of all interests, whether in a particular business, stock portfolio, pension fund, or other retirement fund which encompasses a value of \$100,000 or more and constitutes five percent or more of the outstanding shares. There exists no requirement to disclose the amount of such holding or interest, merely the fact that the filer or member of his immediate family has such an interest.