

SUBJECT: BUSINESS INTERESTS OF NEWLY-APPOINTED TAX COMMISSIONER

SUMMARY:

A newly-appointed Tax Commissioner would not be prohibited from maintaining an interest as a licensed independent insurance agent and real estate broker, provided he follows the provisions of Section 8-13-700(B).

QUESTION:

A newly-appointed Tax Commissioner has been a licensed independent insurance agency and real estate broker. He requests an opinion as to whether his duties as a Tax Commissioner will violate the new ethics law.

DISCUSSION:

This opinion is rendered in response to a letter dated January 2, 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 are no provisions in the Ethics Reform Act which would prohibit the newly-appointed Tax Commissioner from maintaining an interest as a licensed independent insurance agent or real estate broker. He is advised of the provisions of Section 8-13-700(A) which states:

(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 member of his immediate family, 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 which does not result in additional public expense.

He is also advised of the provisions of Section 8-13-700(B) which provides:

(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 reasons for it to be noted in the minutes;

Thus, if he is required to take action as a Tax Commissioner on matters affecting his personal business interests, he is required to follow the provisions of Section 8-13-700(B).