

SEC AO2008-002

September 19, 2007

SUBJECT: CONFLICT OF INTEREST

SUMMARY: A public member of DHEC's State Health Planning Committee is required to recuse from all Committee discussions, deliberations, votes and any other matters related to the economic interest of the public member's affiliated entity. The large class exception found in the definition of economic interest may provide an exception to the recusal requirements of Section 8-13-700(B) under certain circumstances. A State Health Planning Committee member who is no longer employed by the affiliated entity or no longer sits on the entity's board does not have a conflict because of his prior employment or membership on the entity board. A committee chair is not obligated to take any action if a committee member's vote or discussion appear to violate the Ethics Reform Act.

QUESTIONS: 1) Is it permissible for a member of the State Health Planning Committee to make or vote on a motion when the motion affects only an entity with which the member is affiliated, as an employee or board member, for example?

2) Is it permissible for a member of the committee to make or vote on a motion when the motion affects several entities, including an entity with which the member is affiliated?

3) Are the answers to the previous questions different for members who were formerly, but not currently, affiliated with an affected entity?

4) What action, if any, should Dr. Wilson take as chairman of the committee if any of the situations described above take place at a future committee meeting?

## DISCUSSION:

The State Ethics 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 2-17-5 et seq. and Section 8-13-100 et seq., as amended, 1976 Code of Laws of South Carolina). 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.

In previous opinions, the State Ethics Commission has advised that the Ethics Reform Act does not address the issue of multiple service on various boards and commissions. Instead, Section 8-13-700(B) requires that in the event of a conflict of interest, a public member must recuse himself from participating in 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;

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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.

Economic Interest is defined in Section 8-13-100(11) as:

(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.

"Business", as defined in Section 8-13-100(3), "means a corporation, partnership, proprietorship, firm, an enterprise, a franchise, an association [or] organization...."  
"Business with which he is associated" is defined in Section 8-13-100(4) as "a business of which the person ...is a director, an officer, owner, employee [or] a compensated agent...."

A public member of DHEC's State Health Planning Committee (hereinafter "the committee") who is currently a member of a covered board or is an employee of a covered entity must recuse from those matters in which the public member's covered entity is the only entity being affected by the committee's action.

The large class exception found in the definition of economic interest is just that: an exception to the recusal requirements of Section 8-13-700(B) for public members and businesses with which they are associated. This exception must be reviewed on a case-by-case basis to determine whether a large class exists. A committee member who votes on a matter that affects his entity to no greater extent than that which accrues to other entities has not violated Section 8-13-700(B) under the large class exception.

A committee member who has since left a covered entity's board or employment is not required to recuse as there is no "cooling-off" period as there is in the post-employment provisions. The conflict of interest ends when the employment or board membership ends.

The Ethics Reform Act does not provide that a chair must take any affirmative action when faced with the possible violation by a board or committee member of the Act. The committee chair can certainly point out the potential violation, but he is not required or authorized under the Act to prohibit the committee member to vote or participate in the discussions or any other actions related to the matter.

#### CONCLUSION:

A public member of DHEC's State Health Planning Committee is required to recuse from all Committee discussions, deliberations, votes and any other matters related to the economic interest of the public member's affiliated entity. The large class exception found in the definition of economic interest may provide an exception to the recusal requirements of Section 8-13-700(B) under certain circumstances. A State Health Planning Committee member who is no longer employed by the affiliated entity or no longer sits on the entity's board does not have a conflict because of his prior employment or membership on the entity board. A committee chair is not obligated to take any action if a committee member's vote or discussion appear to violate the Ethics Reform Act.

KEY WORDS: business, business with which associated, economic interest, large class exception

ANNOTATIONS: 8-13-700(B), 8-13-100(3),(4), and (11)