

SUBJECT: SCHOOL DISTRICT EMPLOYEE SERVING ON COUNTY ELECTION COMMISSION

SUMMARY:

A school district employee would not be prohibited from serving on a county election commission; however, he would be required to comply with the provisions of Section 8-13-700(B) on matters affecting the school district's economic interests in his capacity as a member of the election commission.

QUESTION:

An employee of Cherokee County School District No. 1 inquires whether the Ethics Reform Act precludes his membership on the Cherokee County Election Commission. The employee currently serves as the District's Director of Information Management Services. In the course of his hiring, the employee received the recommendation of the District Superintendent and was actually hired by the District's Board of Trustees. The Cherokee County Election Commission conducts all general elections in the county including that for the School District Board of Trustees. The Cherokee County Government pays the Election Commissioners an annual salary in the amount of \$500. The County Government's budget is approved by the County Council. None of the funds for the Election Commissioners' salaries are provided by the School District. A special election of the School District Board of Trustees is scheduled for late spring in which a single-member district plan shall be implemented. During the special election, the School District will pay all election expenses associated with the School Board election including: the cost of printing ballots; stipends for poll workers; payment to Election Commission members for any actual hourly work they may perform toward the conduct of the election; and reimbursement to the Election Commission members for any out-of-pocket expenses they may incur during the special election.

DISCUSSION:

This opinion is rendered in response to a letter dated March 25, 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 the member in question may not continue to serve on the Cherokee County Election Commission. 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...." Therefore, for the purposes of Section 8-13-700(B), the State Ethics Commission advises that Cherokee County School District No. 1 is a business with which the district 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.

In accordance with prior advisory opinions, the State Ethics Commission advises that the school district employee is not prohibited from serving on the Cherokee County Election Commission. Nevertheless, the employee would be required to comply with the provisions of Section 8-13-700(B) on matters affecting the school district's economic interests in his capacity as an election commissioner.

Finally, the Commission calls attention to Section 8-13-705 which prohibits public officials, public members and public employees from soliciting or receiving anything of value in return for being influenced in the discharge of their official responsibilities. The State Ethics Commission, however, does not believe that the Cherokee County School District's payment of expenses in connection with the conduct of the special election is an ipso facto violation of Section 8-13-705.