

SUBJECT: REGISTERED LOBBYIST SERVING ON ADVISORY BOARD

SUMMARY:

A registered lobbyist is not prohibited from being reappointed to the South Carolina Retirement and Pre-Retirement Advisory Board since its duties are entirely advisory in nature, and it has no authority to exercise sovereign power of the State.

QUESTION:

The Executive Director of the South Carolina Association of Counties (Director) is a registered lobbyist. Prior to the passage of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act), the Director was appointed to the South Carolina Retirement and Pre-Retirement Advisory Board. The Director's term of service will soon expire, and the appointing authority, the Budget and Control Board, will reappoint him if he is eligible. Accordingly, the Director inquires whether his status as a lobbyist precludes him from being reappointed to the South Carolina Retirement and Pre-Retirement Advisory Board.

DISCUSSION:

This opinion is rendered in response to a letter dated August 20, 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 2-17-5 et seq. and 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 2-17-110(D) provides as follows:

(D) A lobbyist may not serve as a member of a **state board or state commission** (emphasis added), except that any lobbyist serving as a member of a state board or a state commission before January 1, 1991, may continue to serve as a member of the same state board or state commission until the end of his current term.

The State Ethics Commission has previously noted that the term "state board or state commission" and comparable variations appear frequently throughout the Ethics Reform Act; however, neither the Act nor its general reference materials attempt to define this term. For this reason, in an earlier opinion that also turned this question, the Commission advised that 'state board, commission, or council' shall mean an agency created by legislation and which exercises some of the sovereign power of the State.

According to the facts presented, the South Carolina Retirement and Pre-Retirement Advisory Board

was created by legislation, Section 9-2-10 et seq., S.C. Code Ann. (1976). Nevertheless, the board's sole purpose as described in Section 9-2-10 is to advise "the Director of the South Carolina Retirement System and the Director of the State Personnel Division on matters relating to retirement and pre-retirement policies." Accordingly, this board appears truly advisory in nature, and nothing in its enacting legislation suggests the authority to exercise actual sovereign power of the State. The State Ethics Commission, therefore, does not consider the South Carolina Retirement and Pre-Retirement Advisory Board to be a "state board or state commission" within the context of the Ethics Reform Act, and the Commission advises the Director that his status as a registered lobbyist does not preclude his reappointment to that Board.