

SUBJECT: STATE FORESTER PARTICIPATING IN LAND REPLACEMENT ISSUES

SUMMARY: The State Forester must not make, participate in making, or in any way attempt to influence a governmental decision in which he has an economic interest in lands to be acquired to replace lands for Manchester State Forest. He may not disclose or use confidential information that would affect an economic interest held by himself, a member of his household, or an individual or business with whom he is associated. He is further advised to weigh the impact of the preamble to the Ethics Reform Act.

QUESTION: The State Forester questions whether he may participate in the purchase of replacement land for Manchester State Forest while serving on the joint Forestry Commission-Santee Cooper Development Committee.

An agreement was reached in 1992 to exchange lands that were then a part of Manchester State Forest for property at Myrtle Beach Air Force Base. To "save" Shaw AFB, it was deemed desirable to expand the Poinsett Gunnery Range in Sumter County and to transfer the then lease to the US Air Force in fee simple. As a result, 12,520 acres were deeded to the Air Force in exchange for 1,556 acres at Myrtle Beach AFB. The land at Myrtle Beach was to be sold with the proceeds being used to purchase lands for the Forestry Commission to replace those deeded to the Air Force. Santee Cooper was appointed to act as agent. The Budget and Control Board and the Joint Bond Review Committee approved this.

In an agreement between Santee Cooper and the Forestry Commission, a five person Development Committee has been formed to oversee the land transactions. The Forester and Commission Vice-Chairman are appointed to this Committee. The Commission staff is charged to find replacement lands, with Santee Cooper to then handle the acquisitions. The land to be purchased must be appraised with the appraisal and purchase price to be approved by the Budget and Control Board's Property Management Division and the Joint Bond Review Committee. All properties purchased are to be purchased at or lower than the appraised price.

The State Forester moved to family property at Wedgefield in Sumter County in February 1995. He acquired some property after his father's death in 1962. Since then, he has traded and purchased additional land adjacent to or close by land already owned in an effort to consolidate and expand his holdings. The Forester has no plans to sell any land but, instead, intends to establish a family land trust to hold this property.

The issue is whether the State Forester has or will have a conflict of interests if he serves on the joint Forestry Commission-Santee Cooper Development Committee since he owns land near Manchester State Forest and since he intends to acquire another 60 acre tract.

DISCUSSION: 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. An opinion rendered by the Commission, until amended or revoked, is binding on the Commission in any subsequent charges concerning the person who requested the opinion and who acted in reliance on it in good faith unless material facts were omitted or misstated by the person in the request for the opinion. Identities of parties involved must be withheld upon request.

Section 8-13-700(B) provides the steps to be taken by a public employee who is required to take action or make decisions affecting his personal economic interests. 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;

* * *

(3) if he is a public employee, he shall furnish a copy of the statement to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he shall take the action prescribed by the State Ethics Commission;

Economic Interest is defined in §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 Advisory Opinion AO92-064, the State Ethics Commission advised Hospital board members who were also school district employees that they would not be prohibited from deliberating and voting on the hospital's participation in the State Blue Cross Plan since the economic benefits would accrue to all members of a large class even though two members would benefit from the lower costs associated with the hospital accepting Blue Cross payments. In Advisory Opinion AO92-155, the Commission advised that members of a redevelopment commission would not be prohibited from deliberating and voting on matters which would not affect their economic interests to any greater extent than other members of the large class, i.e., all owners of properties in the affected area. The Redevelopment Commission was charged with identifying blighted or conservation areas for a redevelopment plan. Since some of the Commission members could own property in the redevelopment district, the State Ethics Commission advised them not to participate in any matter in which their economic interest was particularly affected.

In Advisory Opinion SEC AO92-174, the State Ethics Commission advised a public employee that, if a particular matter would affect his economic interests to any greater extent than other members of the class, he would be required to abstain from all actions in accordance with §8-13-700(B). In that opinion, an administrative employee who was charged with carrying out board policies owned property in an area that would be impacted by potential improvement of property values. The State Ethics Commission advised that if the employee's economic interests would be particularly affected that he should recuse himself. However, if his participation would not affect his economic interests to any greater extent than other members of the class- being all the owners of properties in the affected area- then he would not have a conflict.

In addition, the Forester is advised to avoid using confidential information gained by virtue of his public position that would enhance his economic interests. Section 8-13-725 provides, in part, as follows:

(A) No public official, public member, or public employee may use or disclose confidential information gained in the course of or by reason of his official responsibilities in any way that would affect an economic interest held by himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated.

The Forester has indicated that he currently owns a large family property tract and intends to acquire an additional 60 acre tract of the family estate. Should the location of property that the Forester intends to acquire or target be in competition with the area

targeted by the Forestry Commission, given the proximity of his property to that near or formerly owned by the Forestry Commission, he should take steps to disclose his conflict and to recuse himself.

To achieve the intent of the legislature, we have consistently approved a cautious approach when advising public employees in the performance of their official responsibilities. The Commission would, therefore, advise the Forester to weigh the Preamble concerning his continued involvement with the Development Committee. The Preamble to the Ethics Reform Act states in part as follows:

Whereas, one of the most important functions of any law aimed at making public servants more accountable is that of complete and effective disclosure. Since many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of impropriety will occur. Often these conflicts are unintentional and slight, but at every turn those who represent the people of this State must be certain that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from a decision, vote, or process that even appears to be a conflict of interest.

KEY WORDS: Conflicts of Interest Economic Interest

ANNOTATIONS: §8-13-700 §8-13-725 Preamble

SEC AO92-064 SEC AO92-174 SEC AO92-155