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# State of South Carolina

## State Ethics Commission

GARY R. BAKER  
EXECUTIVE DIRECTOR

(803) 253-4192  
FAX (803) 253-7539  
5000 Thurmond Mall, Suite 250  
P.O. Box 11926  
Columbia, S.C. 29211

SEC AO92-233

September 16, 1992

SUBJECT: SCHOOL PERSONNEL SERVING ON BANK ADVISORY BOARD

**SUMMARY:**

A School Superintendent and a School Board Chairman would not be prohibited from serving on the advisory board of a branch bank, however, they would be required to follow the procedures of Section 8-13-700(B) on matters affecting the bank in their official capacity as school officials.

**QUESTION:**

The Superintendent of Spartanburg County School District Five questions whether he and the school board chairman may serve on the advisory board of a local branch bank. The members of the advisory board do not serve in a decision making capacity.

**DISCUSSION:**

This opinion is rendered in response to a letter dated May 19, 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.

The State Ethics Commission knows of no reason why a School Superintendent or School Board Chairman could not serve on the advisory board of a local branch bank. The Commission notes, however, Section 8-13-700(B) which provides in part as follows:

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(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;

(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 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;

Business with which he is associated is defined in Section 8-13-100(4) as:

...a business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

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Individual with whom he is associated is defined in Section 8-13-100(21) as:

...an individual with whom the person or a member of his immediate family mutually has an interest in any business of which the person or a member of his immediate family is a director, officer, owner, employee, compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

Section 8-13-100(11) provides as follows:

"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 prior advisory opinions, the State Ethics Commission has advised that a public official or employee who is required to take action in his official capacity which affects a business or individual with whom he is associated to follow the above-quoted sections.