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State Ethics Commission

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SEC AO92-235

September 16, 1992

SUBJECT: BANK CEO SERVING ON COUNTY DEVELOPMENT BOARD

SUMMARY:

With the premise that Section 8-13-775 does not apply to the situation, a nonprofit development corporation would not be prohibited from seeking a loan with the bank with which a Development Board member is associated, however the member is required to follow the disclosure and disqualification procedures of Section 8-13-700(B) if required to take any official action on the loan.

QUESTION:

The Executive Director of the Clarendon County Development Board requests an advisory opinion as to the effect of the new ethics statute. One member of the Board is the CEO of the Bank of Clarendon. He questions whether the Bank's proposed loan to the Development Board's new Development Corporation (a 501 c(3) business development corporation) for financing a building to house new industry violates the statute.

DISCUSSION:

This opinion is rendered in response to a letter dated May 8, 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,

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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 has advised in prior advisory opinions that a public official may contract with public agencies, including his own, providing the official took no official action regarding such contract in accordance with the provisions of Section 8-13-460. Under the recently-enacted Ethics, Governmental Accountability, and Campaign Reform Act of 1991, Section 8-13-700(B) provides that a public member is required to provide a written statement describing a conflict of interests and then must not participate in any matter affecting his economic interests of \$50 or more. 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.

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With the premise that there is no interplay of Section 8-13-775, the State Ethics Commission therefore advises that the bank would not be prohibited from contracting with the Development Corporation. However, the Development Board Member would be prohibited from participating in an official capacity in the contracting process in accordance with Section 8-13-700 (B).