

SUBJECT: BOARD MEMBER EMPLOYED AS PART-TIME TEMPORARY EMPLOYEE

SUMMARY:

A Board Member of the School for the Deaf and Blind would not be prohibited from contracting with the School as a temporary part-time employee since he is not authorized to perform an official function regarding such contract. However, the Board member should abstain from taking any action affecting the matter.

QUESTION:

The Associate Counsel for the School for the Deaf and Blind questions whether a member of the Board may be employed as a part-time temporary employee. The School is required by a contract to provide a sign language interpreter to the Harris Psychiatric Hospital. The Board Member is a deaf individual and is skilled in the area of deaf communication and interpretation. The Board Member would be hired to provide "on-call" interpretation and assistance to the Hospital. His hours would be turned in to the School. The Board Member did not participate in the negotiation or approval of the contract.

DISCUSSION:

This opinion is rendered in response to a letter dated October 24, 1991 requesting an opinion from the State Ethics Commission. The Commission's jurisdiction is limited to the applicability of the State Ethics Act (Act No. 248 of 1991; Section 8-13-100 et. seq., 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

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.

However, the Commission further calls attention to the provisions of Section 8-13-775 which provide:

A public official, public member, or public employee may not have an economic interest in a contract with the State or its political subdivisions if the public official, public member, or public employee is authorized to perform an official function relating to the contract. Official function means writing or preparing the contract specifications, acceptance of bids, award of the contract, or other action on the preparation or award of such contract. This section is not intended to infringe on or prohibit public employment contracts with this State or a political subdivision of this State.

Thus, if the Board Member is authorized to take action regarding the award of such contract, regardless of whether he participated, Section 8-13-775 prohibits him from contracting with the School. However, it appears that the Board Member is not authorized to take official action on the contract. Therefore, the Board Member may perform the contract, provided that the Board Member does not participate in the contracting process.