

SUBJECT: ECONOMIC INTERESTS OF COMMISSIONERS OF PILOTAGE

SUMMARY:

A representative of the Charleston Branch Pilots' Association would not be prohibited from serving on the Commissioners of Pilotage for the Port of Charleston since that relationship is mandated by statute. The Pilot representative would be required to follow the provisions of Section 8-13-700 on matters affecting his personal economic interests or those of the Association to a greater extent than those of other pilots. A one-time conflict statement is not sufficient but rather a statement describing each potential conflict and its effect on the representative's economic interests would be required.

QUESTION:

The President of the Charleston Branch Pilots' Association has requested an opinion concerning the official actions of the Association's representative on the Commissioners of Pilotage for the Port of Charleston. The statute provides that one Commissioner will be a pilot licensed for the Port of Charleston. His understanding is that the Pilot representative is permitted to serve in accordance with Section 8-13-730 but may not participate in matters affecting the economic interests of the Association but must file a statement of potential conflicts. That representative must also file a Statement of Economic Interests. He questions whether his understandings are correct and, further, whether participation in routine matters beyond rate setting would require recusal. He also questions whether a one-time written statement would satisfy the provisions of Section 8-13-730(B)(1) and (5).

The Association President also questions the applicability of Section 8-13-730 to other Commissioners.

DISCUSSION:

This opinion is rendered in response to a letter dated December 2, 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., 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 can address the issue of official actions to be taken by the Pilot Association representative on the Commission. The State Ethics Commission, however, cannot in this opinion directly address issues related to other officials on that Commission.

Section 8-13-730 provides in part as follows:

Unless otherwise provided by law, no person may serve as a member of a governmental

regulatory agency that regulates any business with which that person is associated.

Since the authorizing legislation requires a pilot licensed for the Port of Charleston to be appointed to the Commission, a pilot so appointed would fall within the exception noted in the phrase "unless otherwise provided by law".

Section 8-13-700(1) and (5) provides as follows:

* * *

(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;

* * *

(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.

* * *

Further, economic interest is defined in Section 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.

* * *

Rate increases would apply to all members of the profession in the port to no greater extent than to the Association, therefore, it would not be prohibited for the pilot representative to deliberate and vote on the rate increases. The pilot representative would, however, be required to follow the provisions of Section 8-13-700 if the matter would directly affect his economic interests differently than those of the pilots in general.

The statute requires filing of the statement of potential conflicts of interests when an action or decision is being made which affects the economic interests of a public officeholder. Such requirement exists to allow the public officeholder to review potential actions based on specific actions. A one-time filing would not allow for such circumspection, therefore, the Commission would advise a statement to be filed on each occasion where there is a potential conflict, spelling out the specific area of conflict, rather than a generic one-time statement.