

SUBJECT: HOSPITAL TRUSTEE BEING EMPLOYED BY HOSPITAL AND HOSPITAL PURCHASING SUPPLIES ON EMERGENCY BASIS FROM TRUSTEE

SUMMARY:

A hospital trustee is not specifically prohibited from being employed by the hospital but must follow the procedures of Section 8-13-700(B) when required to take actions regarding his position. Absent an official function regarding purchases, the hospital would not be prohibited from purchasing supplies on an emergency basis from a trustee's business.

QUESTION: The administrator of the Mullins Hospital has requested an opinion on the following questions:

1. May the Mullins Hospital employee one of its Governing Board Members in the capacity of a part-time Registered Pharmacist provided no preferential treatment was given to that Commissioner during the hiring process. If the employment is acceptable, what disclosure requirements are required.
2. May the Mullins Hospital purchase supplies on an emergency basis from a business owned by a Commissioner provided no preferential treatment was given to the Commissioner when the selection process was made. If the purchase of supplies is appropriate, what type of disclosure is required.

DISCUSSION:

This opinion is rendered in response to a letter dated December 13, 1991 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 his situation.

The Ethics Reform Act does not specifically prohibit a person from being employed by the same agency on whose board he serves. In prior advisory opinions, however, the State Ethics Commission has advised that such service in both a master-servant relationship creates some inherent conflicts.

Section 8-13-735 provides:

No person who serves at the same time on:

- (1) the governing body of a state, county, municipal, or political subdivision board or commission, and
- (2) as an employee of the same board or commission or serves in a position which is subject to the control of that board or commission may make or participate in making a decision which affects his economic interests.

Further, Section 8-13-700(B) provides:

(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;

* * *

(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.

In prior advisory opinions, the State Ethics Commission has advised that any person serving in two public capacities should follow the procedures outlined in Section 8-13-700(B) whenever required to take action in one position affecting the other position.

With regard to the second question, the State Ethics Commission notes Section 8-13-775 which provides:

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.

In accordance with this section, a member of the hospital trustees would be prohibited from

contracting with the hospital if he is authorized to perform any official functions regarding the contract, including writing or preparing specifications, acceptance of bids, award of the contract or other action on the preparation or award of the contract, regardless of whether he followed the provisions of Section 8-13-700(B). Absent such official function, the hospital would not be prohibited from purchasing supplies on an emergency basis from a business owned by one of the trustees.

No further disclosure is required except as specified in Section 8-13-700(B).