

SUBJECT: HEALTH CARE PROVIDERS SERVING ON DHEC BOARD

SUMMARY:

Members of the DHEC Board who are medical professionals are not prohibited by Section 8-13-730 from serving on that Board, however, they are advised to follow the procedures of Section 8-13-700(B) on matters affecting their economic interests.

QUESTION:

The Commissioner of the Department of Health and Environmental Control questions whether members of the DHEC Board who are health care providers may continue to serve based on the Ethics Reform Act. Two members are physicians and one is a dentist. DHEC registers health care providers for controlled substance prescriptions. The agency monitors and takes enforcement action against violators. In addition, health care providers register x-ray equipment which is subject to inspections. There are no statutory requirements that Board members be health care providers.

DISCUSSION:

This opinion is rendered in response to a letter dated January 17, 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.

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.

Section 8-13-730 basically mirrors Section 8-13-450 of the previous Ethics Act. In S. C. Coastal Council et. al. v. S.C. State Ethics Commission, Op. No. 23496 (S.C. Sup. Ct. filed October 14, 1991), the Supreme Court examined whether Section 8-13-450 applied to members of the Coastal Council. The Court first reviewed in detail the Coastal Management Act (Act) and the regulations promulgated pursuant to that Act. See, S.C. Code Ann. Section 48-39-10, et. seq., (1987) and 23 S.C. Code Ann. Reg. 30-2-11 and 12 (1976). The Court then held based on its reading of the above law that Coastal Council regulated the "use of critical areas by a business" but not the specific way a particular business is operated. Therefore, the issue pursuant to Section 8-13-730 is whether the DHEC regulates the specific way health providers operate their business.

The State Ethics Commission finds that DHEC's regulation upon the medical profession is de minimis. Since DHEC does not regulate the specific way these health care professionals operate, the Ethics Act does not preclude their service on the DHEC Board. See S.C. Coastal Council et al. v. S.C. State Ethics Commission, Op. No. 23496 (S.C. S.Ct. filed October 14, 1991). As emphasized in Coastal Council, when conflicts of interest do arise, medical professionals serving upon the DHEC Board can and should follow the safeguards provided in S.C. Code Ann., Section 8-13-700(b) (supp. 1992) which 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;

* * *

(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.

Thus, on any matters coming before the DHEC Board requiring action which affects a Board Member's economic interests is required to follow these procedures. 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.