

SUBJECT: PUBLIC SERVICE DISTRICT COMMISSIONER WITH INTEREST IN
VENDOR COMPANY

SUMMARY:

A vendor company in which a public service commissioner has a majority interest is prohibited from contracting with the district if the commissioner is authorized to perform an official function regarding such contracts. Absent such authorization, the commissioner is advised to follow the provisions of Section 8-13-700(B) when required to take action regarding his business.

QUESTION:

The attorney for a public service district questions the actions of a new commissioner who was formerly the chief executive officer of a communications company. The company has had a long term business relationship, providing service, maintenance, and repairs of equipment sold to the district. Prior to the commissioner's election, he resigned all his executive responsibilities and has no other relationship other than as the majority stockholder.

DISCUSSION:

This opinion is rendered in response to a letter dated February 21, 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 8-13-700(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;

* * *

(4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body 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 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 the disqualification and the reasons for it to be noted in the minutes;

Section 8-13-100(11) provides in part as follows:

(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.

Further, business with which he is associated is defined in Section 8-13-100(4) as:

...a business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

The State Ethics Commission further notes that Section 8-13-775 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.

Thus, contracting with the public service district is prohibited if the Commissioner is authorized to perform an official function in a contract through writing or preparing specifications, acceptance of bids, award of the contract, or other action on the preparation or award of such contract, regardless of whether he followed the provisions of Section 8-13-700(B).

If the Commissioner is not authorized to perform any official function, as defined in Section 8-13-775, regarding a contract, then he must follow the procedures of Section 8-13-700(B) when required to take action regarding such contract, i.e., payment of invoices, administering the contract, etc. Such statement of conflict is required on each occasion in which there is a conflict. A blanket statement is not allowed but one which is provided for each instance of conflict describing the specific conflict. Such statement is to be referenced in and attached to the minutes of each meeting to which the conflict statement applies.