

SUBJECT: PUBLIC SERVICE DISTRICT MEMBERS PARTICIPATING IN MATTERS AFFECTING A BUSINESS ASSOCIATION

SUMMARY:

Two public service district members are prohibited by Section 8-13-700(B) from participating in matters affecting the economic interests of another public service district with which they are associated.

QUESTION:

The District Manager of the James Island Public Service District(JIPSD) questions whether two persons associated with that District may serve on the James Island Park and Playground Commission(JIPPC). The JIPSD supplies sewer solid waste collection, fire and other services to residents located within its service area. Its commissioners are elected. The JIPPC is charged with creating, developing, and enlarging the system of parks and playgrounds within its territory, which is the same as the JIPSD's. All of the seven members of the JIPPC are appointed by the Governor. Five members are recommended by the JIPSD and two are recommended by James Island School District No. 3.

One recent appointee to the JIPPC is employed by the law firm which regularly represents the JIPSD. The other appointee is employed as fire chief by JIPSD.

JIPSD is currently seeking to condemn a parcel of land owned by the JIPPC. JIPPC has filed legal action challenging the authority of JIPSD to condemn the parcel. The condemnation action is being handled by the law firm with which the first appointee is employed.

The Manager questions whether the two appointees may serve on the JIPPC. And, if so, can they vote or otherwise participate in matters affecting the JIPSD, such as the condemnation litigation.

DISCUSSION:

This opinion is rendered in response to a letter dated February 28, 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.

The Ethics Reform Act does not provide as to who may serve on local boards and commissions.

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;

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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.

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

(4) "Business with which he is associated" means 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.

Individual with which he is associated is defined in Section 8-13-100(21) as:

"Individual with whom he is associated" means an individual with whom the person or a member of his immediate family mutually has an interest in any business of which the person or a member of his immediate family is a director, officer, owner, employee, 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.

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's, 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.

The State Ethics Commission has previously advised that a person holding two public positions should follow the provisions of Section 8-13-700(B) in actions required in one public position affecting the other. The Commission advises that both JIPPC members follow the provisions of Section 8-13-700(B) when required to take action or make decisions affecting the JIPSD.