

SUBJECT: SERVICE ON BABCOCK CENTER BOARD AND REGIONAL MENTAL
RETARDATION BOARD

SUMMARY:

A member of a mental retardation board is not prohibited from also serving on the board of a service provider, however, such member is advised to follow the provisions of Section 8-13-700(B) concerning matters affecting the economic interests of such service provider.

QUESTION:

The Executive Director of the Richland/Lexington Mental Retardation Board questions whether it is permissible to serve on the Babcock Center Board and the Richland/Lexington Mental Retardation Board at the same time. The Mental retardation Board is a legislatively appointed public entity which facilitates and oversees services to people with mental retardation in Richland and Lexington Counties. The Babcock Center is a private, not for profit corporation set up to serve people with mental retardation, primarily in Richland and Lexington Counties.

DISCUSSION:

This opinion is rendered in response to a letter dated March 13, 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 prohibit a public member from serving on the board of a related organization. However, such public member is advised of the provisions of Section 8-13-700(B) 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;

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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.

Thus, a member of the Board of the Richland/Lexington Mental Retardation Board is advised to follow the above procedure on matters affecting the economic interests of Babcock Center. 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.

Based upon the facts as submitted, the State Ethics Commission knows of no reason why a person cannot serve as a member of the Babcock Center Board and the Richland/Lexington Mental Retardation Board provided such service is consistent with the provisions of Section 8-13-700(B).