

SUBJECT: APPLICABILITY OF ETHICS STATUTE TO VOTER REGISTRATION BOARD

SUMMARY:

Members of a compensated Board of Voter Registration are required to file a Statement of Economic Interests. Board members are prohibited from setting their own wage rate or their own hours of compensated employment.

QUESTION:

The Charleston County Deputy Attorney requests advice concerning the functioning of the County Voter Registration Board, which is organized according to statute. The five members are appointed by the Governor and charged to register voters for election purposes. Historically, the five members have been paid as employees of the Board; they receive an hourly wage, which was established by County Council in 1978. Two of the Board members work full time (40 hours a week), two other Board members work half time (20 hours a week), and one Board member is paid only on an hourly basis. The Board meetings are always scheduled for 10:00 a.m. (during office hours), and the Board members are paid their regular salaries during the time that they attend the meetings. The members set their own hours, as well as the hours of Board operation. Moreover, eligibility for County insurance coverage is contingent upon an employee's working a minimum number of hours per week. Thus, in determining the number of hours they will work, not only are the Board members controlling the amount of compensation they receive, they are also establishing their eligibility for insurance coverage.

DISCUSSION:

This opinion is rendered in response to a letter dated May 6, 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.

1. Are members of the Voter Registration Board defined as public members under the Ethics Act? Are these board members, who are similar to the Community Mental Health Board members and the persons serving on the Governor's Council on Work Force Excellence, not required to file a Statement of Economic Interests?

Public employee is defined in Section 8-13-100(25) as:

...a person employed by the State, a county, a municipality, or a political subdivision thereof.

Public member is defined in Section 8-13-100(26) as:

...an individual appointed to a **noncompensated** (emphasis added) part-time position on a board, commission, or council. A public member does not lose this status by receiving reimbursement of expenses or a per diem payment for services.

Public official is defined in Section 8-13-100(27) as:

...an elected or appointed official of the State, a county, a municipality, or a political subdivision thereof, including candidates for the office...

The members of the Charleston County Voter Registration Board are considered public officials for the purposes of the Ethics Reform Act since they are appointed officials who are compensated for their Board service. They are further considered public employees within the context of the Ethics Reform Act since they also serve as Board employees. Accordingly, for the purposes of the Ethics Reform Act, members of the Charleston County Voter Registration Board, appear to be both public employees as well as public officials.

Section 8-13-1110(B) cites those public officeholders who are required to file the Statement of Economic Interests. Section 8-13-1110(B) provides in part as follows:

Each of the following public officials, public members, and public employees must file a statement of economic interests with the appropriate supervisory office, unless otherwise provided:

* * *

(10) a public official

* * *

Thus, members of the Voter Registration Board are public officials who are required to file a Statement of Economic Interests.

2. Since the public [officials] of the Voter Registration Board are also employees of Charleston County, is Section 8-13-700(A) violated because, as Board members, they set their own office hours and thus directly control the amount of income accruing to them as employees?

Section 8-13-700(A) provides:

(A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a

business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use which does not result in additional public expense.

From the facts submitted, if the Board members are allowed to set their own hours of compensated employment without oversight, it would appear that this section may be violated. The Commission suggests that some other competent authority establish not only the members' wage rate, but also their hours of employment to insure that the appointment to the Board is not a misuse of official position to obtain a financial benefit.

3. Is Section 8-13-720 violated when the Board members receive compensation as employees for advice they render on a public board as Board members?

Section 8-13-720 provides:

No person may offer or pay to a public official, public member, or public employee and no public official, public member, or public employee may solicit or receive money in addition to that received by the public official, public member, or public employee in his official capacity for advice or assistance given in the course of his employment as a public official, public member, or public employee.

Based on the facts presented, the State Ethics Commission does not believe that Board members who serve in a dual capacity as employees violate Section 8-13-720 strictly because they receive compensation for service on that Board.

4. Is Section 8-13-735 violated because this is a [county] Board and, as employees of the Board, they make decisions which directly affect their own economic interests?

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.

Accordingly, members of the Voter Registration Board are prohibited from taking actions as members which affect them in their employment status. Instead, they are required to follow 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;

* * *

(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;

Thus, Sections 8-13-700(B) and 8-13-735 prohibit members of the Charleston County Voter Registration Board from participating in matters affecting their economic interests. As indicated in the Commission's response to question 2, some competent authority other than the board itself should establish the members' hours of actual employment in order to insure that the above-quoted sections, as well as Section 8-13-700(A), are not violated.