

SUBJECT: APPLICABILITY OF ETHICS REFORM ACT TO MEMBERS OF THE  
SMALL EMPLOYER INSURER REINSURANCE PROGRAM

SUMMARY:

Members of the Small Employer Insurer Reinsurance Program Board are "public members" under the Ethics Reform Act of 1991 and, thus, are subject to the Act's requirements.

QUESTION:

Section 11 of the Small Employer Health Insurance Availability Act created a nonprofit entity known as the South Carolina Small Employer Insurer Reinsurance Program whose general purpose is to promote the availability of health insurance coverage to all small employers and to improve the overall fairness and efficiency of the small group health insurance market. The Program operates under the supervision and control of an eight member board of directors whose appointments, terms and duties are prescribed in the Act. The General Counsel for the South Carolina Department of Insurance inquires whether the members of the governing board are subject to the requirements of the Ethics, Government Accountability, and Campaign Reform Act of 1991.

DISCUSSION:

This opinion is rendered in response to a letter dated November 17, 1994 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 2-17-5 et seq and 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.

As noted in the Commission's previous advisory opinions, the Ethics, Government Accountability, and Campaign Reform Act of 1991 covers three categories of government officers: public officials, public members, and public employees. "Public member," the classification into which the board members would most likely fall, is defined in Section 8-13-100(26) as "an individual appointed to a non-compensated 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." Accordingly, the paramount issue in resolving the Ethics Reform Act's applicability to the members is whether the Small Employer Insurer Reinsurance Program is a board, commission, or council within the meaning of the Ethics Reform Act.

Section 11 of the Small Employer Health Insurance Availability Act, which creates the Small

---

Employer Insurer Reinsurance Program, provides in part as follows:

(A) There is hereby created a nonprofit entity to be known as the South Carolina Small Employer Insurer Reinsurance Program, which shall become operational on July 1, 1995.

(B)(1) The program shall operate subject to the supervision and control of the board. Subject to the provisions of paragraph (2), the board shall consist of eight members appointed by the commissioner plus the commissioner or his designated representative, who shall serve as an ex officio member of the board.

The remainder of Section 11 provides a detailed description of the board's duties, which go beyond being merely advisory in nature, as well as the manner, qualifications and terms of the appointments. Accordingly, the Commission notes that a "public officer" has been generally defined as

one who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing, and are not occasional or intermittent . . .

Sanders v. Belue, 78 S.C. 171, 58 S.E. 762, 763 (1907). Moreover, other relevant indicia include whether statutes or other authority establish the position, prescribe its duties, tenure, salary, and bond or require oath or qualifications. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980). Thus, based on the information submitted, it is the opinion of the State Ethics Commission that members of the Small Employer Insurer Reinsurance Program Board of Directors are "public members" under the Ethics Reform Act of 1991 and are subject to the Act's requirements.