

SEC AO2009-004

January 21, 2009

SUBJECT: CONFLICT OF INTEREST

SUMMARY: The Ethics Reform Act does not prohibit a public member from serving on multiple boards, commissions or foundations. A Trustee of Coastal Carolina University, i.e. a public member, is required to recuse from all Board of Trustee discussions, deliberations, votes and any other matters related to the economic interest of a foundation on which the Trustee also serves.

QUESTION: Does concurrent service on a college or university board of trustees and the board of directors of any affiliated entity of the college or university constitute a violation of state ethics law(s)?

DISCUSSION:

This opinion is rendered in response to a letter dated November 24, 2008 requesting an opinion from the State Ethics Commission. The Commission's jurisdiction is limited to the applicability of the State Ethics Act, S.C. Code §2-17-10; 8-13-100 (Supp. 1996). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation.

In previous opinions, the State Ethics Commission has advised that the Ethics Reform Act does not address the issue of multiple service on various boards, commissions and foundations. Instead, Section 8-13-700(B) requires that in the event of a conflict of interest, a public member must recuse himself from participating in governmental actions or decisions.

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.

Economic Interest is defined in Section 8-13-100(11)(a) as:

(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.

"Business", as defined in Section 8-13-100(3), "means a corporation, partnership, proprietorship, firm, an enterprise, a franchise, an association [or] organization...." "Business with which he is associated" is defined in Section 8-13-100(4) as "a business of which the person ...is a director, an officer, owner, employee [or] a compensated agent...."

Public members of Coastal Carolina University's Board of Trustees (hereinafter "CCU"), who also serve as members of independent, albeit college affiliated, foundations, must recuse from those CCU matters in which the foundations have an economic interest. The foundations are businesses with which the CCU Trustees are associated pursuant to Section 8-13-100(4) and recusal is required pursuant to Section 8-13-700(B).

CONCLUSION:

The Ethics Reform Act does not prohibit a public member from serving on multiple boards, commissions or foundations. A Trustee of Coastal Carolina University, i.e. a public member, is required to recuse from all Board of Trustee discussions, deliberations, votes and any other matters related to the economic interest of a foundation on which the Trustee also serves.

KEY WORDS:	business, business with which associated, economic interest
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ANNOTATIONS:	8-13-700(B), 8-13-100(3),(4), and (11)
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