

1982 WL 189375 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 21, 1982

*1 J. Dawson Addis
Commissioner
Industrial Commission
1800 St. Julian Place
Columbia, South Carolina 29204

Dear Commissioner Addis:

You have asked the opinion of this Office on whether a member of the Industrial Commission who has filed a workmen's compensation claim ought to disqualify himself or be disqualified from conducting hearings or participating in decisions on other claims until his claim is resolved.

Our research of South Carolina authority has not revealed any statutes, rules, regulations or reported cases applicable to this situation, but case decisions in other jurisdictions have held that the common law rules on the disqualification of judges extend to administrative bodies or officers exercising judicial or quasi-judicial functions. 1 Am.Jur.2d. Administrative Law, Section 63, 859-860. Such an administrative officer or the member of such a body would possess the common law power, as judges do, to disqualify himself in a matter. Similarly, an administrative body with judicial or quasi-judicial functions should have the power to disqualify one of its members. *See*, 48A C.J.S., Judges, Section 131, 801-802; 1 Am.Jur.2d, *supra*, Section 63, 859-860. Grounds for disqualification recognized under the common law include situations where such an officer or member has a personal or pecuniary interest or is biased or prejudiced in a matter before him. 1 Am.Jur.2d, *supra*, Section 64, 860-861. The personal or pecuniary interest on which a disqualification is based must be direct, definite and capable of demonstration; it cannot be remote or speculative. *Id.*, 861. ¹ If a sufficient ground for disqualification is present, it could be subject to waiver by the parties. *Ex Parte Hilton*, 64 S.C. 201, 206, 41 S.E. 978 (1901) [Dealing with the disqualification of judges.]

Because the members of the Industrial Commission exercise judicial or quasi-judicial powers [*See*, e.g., [Sections 42-17-20, 14-17-40, 14-17-50, 14-17-60, Code of Laws of South Carolina](#), 1972, as amended], the common law rules on disqualification of judges should apply to them. Therefore, where a sufficient personal or pecuniary interest or bias or prejudice in a matter is present, it is the opinion of this office that a member of the Commission should disqualify himself or be so disqualified by the Commission, unless the parties waive their rights with respect to the disqualifying ground. This office cannot issue an opinion on whether the particular situation presented by you constitutes a disqualifying ground in that this is a question of fact and law reserved to the Commission and its members.

Where a personal financial interest of a member of the Commission or a person in his household or a business with which a member is associated would be affected by a matter before the Commission, the provisions of Section 8-13-460, as amended, may be applicable. You should contact the State Ethics Commission if you wish guidance on the application of this section. ²
Sincerely,

*2 James M. Holly
Assistant Attorney General

Footnotes

- 1 Annotations dealing with specific grounds of disqualification for various [administrative officers may be found at 10 A.L.R.3d 694; 97 A.L.R.2d 1210; and 133 A.L.R. 1257.](#)
- 2 If the provisions of Section 8-13-460, as amended, are applicable to the Commission, this should not exclude the broader grounds for disqualification under the common law rule. 1 Am.Jur.2d, [supra](#), Section 63, 860.

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