

1975 S.C. Op. Atty. Gen. 201 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4133, 1975 WL 22429

Office of the Attorney General

State of South Carolina

Opinion No. 4133

September 25, 1975

\*1 Honorable Thomas M. Marchant, III

Representative

Dist. 20, Greenville County

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Greenville, SC 29606

Dear Tom:

Your previous inquiry was not answered because a response to your letter was sent to you by the Ethics Committee, and I assumed that their answer would be adequate. In any event, we have prepared an opinion, which is as follows:

You have inquired of the Committee, and also requested clarification from me, as to whether the Economic Interest provisions of the Ethics Act (Act No. 191, Acts of 1975) require the reporting of a business transaction with ' . . . a county, district or other political subdivision . . . ' that a member of the General Assembly does not represent.

As you know, the Act establishes House and Senate Ethics committees as well as the State Ethics Commission. Among other duties set forth in Part III of the Act, §§ 7–11, each legislative ethics committee is to:

Act as an advisory body to the General Assembly and to individual members of the appropriate house on questions relating to possible conflicts of interest. [§ 9(4)]

Thus, you were correct in addressing your inquiry to the House Ethics Committee.

Section 2(g) of the Act provides as follows:

As used in this act: \* \* \* 'Economic interest' means any business transaction by a person directly with the State or any administrative agency or department thereof, or with a county, district, or other political subdivision thereof;

Section 2(1): 'Person' means an individual, partnership, committee, association, corporation, labor organization and any other organization or groups of persons.

Set forth in part below are sections 24 and 25, which relate to the disclosure of economic interests.

Section 24. No member of the General Assembly . . . shall be allowed to take the oath of office . . . unless he has filed a statement of economic interests in accordance with the provisions of this act . . . If members of the General Assembly . . . have no economic interests as defined in item (g) of Section 2 they shall nevertheless file a negative report to that effect . . .

Section 25. Any statement of economic interests or negative report thereon filed under this act shall be on forms prescribed by the State Ethics Commission, and the person filing the statement, if he has economic interests shall report: (1) By name, of all offices, directorships and fiduciary relationships held by such person, where an economic interest exists.

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(3) The nature, source and amount of all fees, compensation and benefits of any nature received directly from the State or any administrative agency or department thereof; or directly from the county, district, or political subdivision he represents, or any subdivision thereof.

(emphasis added)

Inasmuch as the State Ethics Commission is not yet formally constituted, the economic interest disclosure forms 'prescribed by the State Ethics Commission' referred to in Section 25 are obviously not now available. The House Ethics Committee ruled at its recent meeting that members of the House are not legally required to submit economic interest disclosure statements until the Commission has prescribed the forms, but that members may voluntarily submit disclosure statements on temporary forms drawn up by the Committee.

\*2 The question you raise concerning the disclosure of transactions with governmental subdivisions other than the one represented was also considered during the Committee's recent meeting. For purposes of the temporary, voluntary disclosure form referred to above, the Committee interpreted the Act as requiring disclosure of business transactions with any of the referenced governmental entities, regardless of whether the reporting official represents that particular entity. The Chairman of the House Judiciary Committee was present, and he indicated that this interpretation correctly reflects the legislative intent. The Committee further decided to propose certain amendments to the Act that would remove ambiguity on this point.

In my opinion the Act's definition of economic interest clearly encompasses transactions with all governmental subdivisions, regardless of representation. Furthermore, the provision in § 24 relating to negative reports, underlined above, refers expressly to the § 2(g) definition of economic interest.

There is, however, some inconsistency between Sections 25(1) and (3), which relate to the manner in which economic interests are to be reported. Section 25(1) requires the official to report '[b]y name, of all offices, directorships and fiduciary relationships held by such person, where an economic interest exists' (emphasis added). The determination of whether an economic interest exists could only be made by reference to the § 2(g) definition, which, as noted above, encompasses transactions with all governmental subdivisions, regardless of by whom represented.

Section 25(3), however, is to a certain extent inconsistent with the Act's definition of economic interest, in that it appears to limit the reporting of the 'nature, source and amount of all fees, compensation and benefits of any nature' to those fees, compensation and benefits received from state agencies and departments and 'from the county, district, or political subdivision he represents . . .' (emphasis added) When the Ethics Bill was first approved by the House, the statutory definition of economic interest was limited to transactions by a public official with state agencies and departments and with the governmental subdivisions 'he represents'. Prior to final enactment, however, the definition of economic interest was broadened, and the words 'he represents' were deleted. These two words apparently were inadvertently left in § 25(3) at the time the identical phrase was omitted from the definition. Pursuant to its statutory mandate to propose changes in the Act (§ 8), the Committee has approved a proposal to delete the words 'he represents' from § 25(3).

It should be emphasized that the Act in its present form calls for all economic disclosure reports to be filed on forms 'prescribed by the State Ethics Commission' (§ 25). Until such time as the Commission is formally constituted and operational, the 1975 Ethics Act would not require any public official to make the economic interest disclosures. Once the official forms are available, all economic interest transactions which have occurred since July 1, 1975, will be reportable.

Very truly yours,

\*3 Daniel R. McLeod  
Attorney General

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