1983 WL 181771 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
February 25, 1983

***1** The Honorable Norma C. Russell
Senator
Suite 602
Gressette Senate Office Building
Columbia, SC 29202

Dear Senator Russell:
In a letter to this Office, you requested an opinion as to whether it is a conflict of interest for Mr. R. James Aycock III, who is the owner of a nursing home, to serve on the Board of the South Carolina Department of Social Services.

I am enclosing a copy of a previous opinion of this Office dated January 23, 1981, in which former Attorney General Daniel R. McLeod determined that inasmuch as nursing homes in this State are not subject to regulation by the Department of Social Services, an owner of a nursing home is not precluded from serving on the Board of the Department of Social Services. Such determination was made primarily upon review of Section 8-13-450, Code of Laws of South Carolina, 1976, as amended, which provides in part that:
'[u]nless otherwise provided by law, no person shall serve as a member of a governmental regulatory agency that regulates any business with which that person is associated.'

For your information, I am enclosing a copy of another opinion of this Office, a letter to Senator John Land dated January 4, 1982, concerning the propriety of Mr. Aycock voting on all matters before the Department of Social Services, including matters affecting nursing homes. Such opinion referenced Sections 8-13-410, 8-13-440, and 8-13-460, Code of Laws of South Carolina, 1976, as amended, which concern actions taken by public officials which affect their financial interests.

In addition to the comments provided in the referenced letter, I would further add that Section 8-13-460, supra, prescribes a procedure of disclosure and disqualification to be followed if a public official is required to take action or make a decision in his public capacity on a matter substantially affecting directly his financial interests. Such section describes financial interests as both personal interests or those of a member of his household and interests of a business with which he is associated. 'Business with which he is associated' is defined by Section 8-13-20(b), Code of Laws of South Carolina, 1976, as:
'. . . any business of which the person or a member of his household is a director, officer, owner, employee, or holder of stock worth ten thousand dollars or more at fair market value, and any business which is a client of the person.'

The prescribed procedure to be followed pursuant to Section 8-13-460, supra, in the referenced circumstances is as follows:
'(a) Prepare a written statement describing the matter requiring action or decision, and the nature of his potential conflict of interest with respect to such action or decision.

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(c) . . . If the public official is a member of the governing body of any agency, commission, board, or of any county, municipality, or other political subdivision, he shall furnish a copy to the presiding officer and to the members of that governing body, who shall cause such 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 therefor to be noted in the minutes.

***2** Therefore, whenever a public official is required to take some action or make a decision which would directly affect substantially his financial interests, he should provide the referenced written statement and disqualify himself from further participation in the matter.

If there are any further questions, please advise.
Sincerely,

Charles H. Richardson
Assistant Attorney General

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