

1983 WL 182088 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 20, 1983

\*1 Honorable Isadore E. Lourie  
Senator  
Senatorial District No. 7  
Post Office Box 142  
Columbia, South Carolina 29202

Dear Senator Lourie:

You have inquired of this office whether §§ 8-13-70 and [58-3-142](#), [Code of Laws of South Carolina](#), 1976 (1982 Cum.Supp.) Prohibit you as a member of the General Assembly or an attorney associated with your law practice from representing a 'radio common carrier' in its application for a certificate of public convenience and necessity with the Public Service Commission. It is the opinion of this office that such representation is not prohibited by the referenced code provisions.

[Code §§ 8-13-470](#) and [58-3-142](#) prohibit a member of the General Assembly from appearing before the Public Service Commission as an attorney on behalf of a party in any rate fixing proceeding. The prohibition extends to partners or associates of the member's law firm. Significantly, however, the prohibitive scope of these code provisions precludes only appearances in rate fixing proceedings. Thus, an appearance in a proceeding other than a rate fixing proceeding before the Public Service Commission is not prohibited.

Pursuant to [§ 58-11-100 of the 1976 Code](#), a radio common carrier must obtain a certificate of public convenience and necessity from the PSC prior to operation of the radio common carrier system. [Sections 58-11-100](#); [58-11-470](#); [58-11-480](#). Apparently there are no procedural rules or statutory provisions specifically pertaining to the procedure for acquiring a certificate for the operation of radio common carrier system. Nonetheless, certain Commission rules of procedure have general applicability including rules which provide for the procedure that the obtaining of a certificate is initiated by the filing of an application therefor. R103-834, Rules and Regulations of the PSC.

The issuance of the certificate of public convenience and necessity pursuant to a duly filed application does not involve the setting of rates, although the Commission pursuant to other Code provisions [[§§ 58-11-10-58-11-70](#), and [58-11-410](#)] is required to determine the reasonableness of rates charged and collected by radio common carriers. While a member of the General Assembly must avoid involvement in procedures for rate fixing held pursuant to these sections, there is no similar prohibition upon a member of the General Assembly representing as an attorney the radio common carrier in distinct proceedings involving the obtention of a certificate of public convenience and necessity.<sup>1</sup>

Thus, you are advised that the obtaining of a certificate of public convenience and necessity on behalf of a radio common carrier pursuant to [§ 58-11-100](#), [§§ 58-11-470](#) or [480](#), does not involve 'rate fixing' as that phrase is used in [§ 58-3-142](#) or [§ 8-13-470](#).  
Very truly yours,

Edwin E. Evans  
Senior Assistant Attorney General

Footnotes

- 1 The application and resulting proceedings for obtaining a certificate of public convenience and necessity on behalf of a radio common carrier and proceedings for approval of rates are often times consolidated. R103-864, PSC Rules of Procedure. However, consolidation to facilitate the proceeding[s] does not diminish the fact that they involve distinct issues and separate determinations by the Commission. When consolidation occurs, a member of the General Assembly should proceed cautiously to avoid appearing in the rate fixing procedures.

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