

1980 S.C. Op. Atty. Gen. 33 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-11, 1980 WL 81895

Office of the Attorney General

State of South Carolina

Opinion No. 80-11

January 29, 1980

*1 The Honorable Patrick B. Harris
Member
House of Representatives
Chairman
House Legislative Ethics Committee
Post Office Box 11867
Columbia, South Carolina 29211

Dear Mr. Harris:

Your letter of January 22, 1980, states that a Member of the House is going to offer as a candidate for the Public Service Commission, and you request an opinion as to whether or not he can serve in the House during the time that he is running for the Commission and also whether or not he can participate in the budget hearings for this section.

Act No. 167 of the 1979 session of the General Assembly, approved July 1, 1979 (79 Acts 351), provides:

‘After January 1, 1981, no Member of the General Assembly shall be elected to the Public Service Commission while such person is serving in the General Assembly nor shall any such person be elected to the Public Service Commission for a period of four years after he ceases to be a Member of the General Assembly.’

In my opinion, this provision does not become operative until January 1, 1981; consequently, a Member of the House serving prior to that time would be eligible to be voted on in an election held prior to January 1, 1981. Subsequent to that date, membership in the General Assembly will preclude election to the Public Service Commission during such period of service and for four years after the individual ceases to be a Member of the General Assembly.

[Section 8-13-460, Code](#) of Laws, 1976, requires that:

‘Any public official—who, in the discharge of his official duties, would be required to take action or make a decision which would substantially affect directly his personal financial interest—shall—take the following actions:

(a) Prepare a written statement describing the matter requiring action or decisions, and the nature of his potential conflict of interest with respect to such action or decision.

(b) If he is a legislator, he shall deliver a copy of such statement to the presiding officer of his legislative branch. The presiding officer if requested by the legislator shall cause such statement to be printed in the journal and, upon request, shall excuse a legislator from votes, deliberations, and other action on the matter on which a potential conflict exists; provided, however, any statement delivered within twenty-four hours after the action or decisions shall be deemed to be in compliance with this section.’

All persons to be elected to membership on the Public Service Commission must be chosen from nominees submitted by the Merit Selection Panel. If the legislator has not been nominated by that Panel to fill a vacancy, the statement of financial interest

required by [Section 8-13-460](#) need not be submitted. On the other hand, if a legislator has been nominated, in my opinion, he should file such a statement and should request the presiding officer to excuse him from votes or other deliberations on any matter relating to the Public Service Commission. It is my opinion, also, that the request for such excusal may come from the legislator himself or may be made by any other Member of the appropriate House of the General Assembly. The manner in which matters of a potential financial interest or conflict may appear in the General Assembly proceedings are, of course, varied and may require exercise of judgment in specific instances, but, broadly speaking, the legislator will follow the safest and most appropriate course if he should file the statement of interest with the presiding officer upon his nomination having been made and thereafter not participate in any budgetary matters concerning such conflict that may come before the House.

Very truly yours,

*2 Daniel R. McLeod
Attorney General

P. S. It is my opinion, also, that the legislator need not resign should he be nominated by the Merit Selection Panel to fill a vacancy on the Public Service Commission.

D.R.M.

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