

1977 S.C. Op. Atty. Gen. 322 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-394, 1977 WL 24730

Office of the Attorney General

State of South Carolina

Opinion No. 77-394

December 14, 1977

*1 The Honorable Patrick B. Harris
Chairman
House of Representatives
House Legislative Ethics Committee
P. O. Box 11867
Columbia, SC 29211

Dear Mr. Harris:

Attorney General McLeod has asked me to respond to your recent inquiry concerning the State Ethics Law, 1976 Code Section 8-13-10 et seq.

Your question specifically relates to Section 8-13-470, which reads as follows:

Appearance by public official or employee before certain commissions.—No public official or public employee shall appear before the South Carolina Public Service Commission, the South Carolina Dairy Commission or the South Carolina Insurance Commission in rate or price fixing matters. This prohibition shall also apply to partners or associates in the law firm of a member of the General Assembly. Whenever it is required by law for a member of the General Assembly to appear because of his business interest as an owner or officer of such business or in his official capacity as a member of the General Assembly, the provisions of this section shall not apply.

You have asked whether the language in this section, ‘Whenever it is required by law . . .’ refers only to appearances because of business interests, or also refers to appearances in the legislator's official capacity.

This question has been dealt with by the State Ethics Commission in previous opinions, and the result has been to interpret the modifying phrase ‘Whenever it is required by law . . .’ as referring only to appearances because of business interests.

The enclosed Ethics Opinions, Nos. 77-040, 77-056, 77-058, and letter dated March 31, 1977, are provided for your information. These Opinions reach the following conclusions:

- 1) Public employees and members of the General Assembly may appear before the listed regulatory agencies when required by law to do so because of an appropriate business interest;
- 2) Public employees and members of the General Assembly may appear before the listed regulatory agencies as a private citizen to give an individual personal comment on a matter before the agency;
- 3) Members of the General Assembly, when acting as the elected representatives of their constituents, may appear before the listed regulatory agency without compensation or other financial benefit, solely to represent the interests of their constituents.

You will note from reading the enclosed Opinions that the results reached are based on an attempt to determine legislative intent in a reasonable fashion. The constitutionally protected individual first amendment rights of members of the General Assembly have been considered carefully. The Section 8-13-470 language does not clearly and positively deny a member of

the General Assembly his constitutional right to appear before the listed agency as a private citizen, and such a denial should not be presumed. Likewise, the legislator's constitutional duty to represent all the interests of all constituents, wherever such interests may appear, is not clearly removed by this statute.

*2 The obvious intent of the Ethics Act in general, and Section 8-13-470 in particular, is to prevent public employees and public officials from using their positions to exert undue influences on State boards and commissions while obtaining personal compensation therefore. Such a result is reached under the interpretation given to Section 8-13-470 by the Ethics Commission.

And equally importantly, the result is reached in harmony with the legislators' first amendment rights and their constitutional mandate to represent their constituents.

I hope this information will be helpful to you.

Sincerely,

George C. Beighley
Assistant Attorney General

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