

1990 WL 599192 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 30, 1990

*1 The Honorable Fred L. Day
78 Day Road
Ladson, South Carolina 29456

Dear Mr. Day:

You have advised that you have been recommended for appointment by the Governor to the State Commission on Higher Education, by the legislative delegations comprising the First Congressional District. That appointment by the Governor is currently pending. Whether a conflict of interest may exist, if you are so appointed, has been questioned, as your brother is a member of the Board of Trustees of the College of Charleston.

The term "conflict of interest" is defined in Black's Law Dictionary as a term used in connection with public officials and fiduciaries and their relationship to matters of private interest or gain to them. Ethical problems connected therewith are covered by statutes in most jurisdictions and by federal statutes on the federal level. Generally, when used to suggest disqualification of a public official from performing his sworn duty, term "conflict of interest" refers to a clash between public interest and the private pecuniary interest of the individual concerned. *Gardner v. Nashville Housing Authority of Metropolitan Government of Nashville and Davidson County, Tenn.*, C.A.Tenn., 514 F.2d 38, 41.

Id. at 271 (5th Ed. 1979). In South Carolina, the State Ethics Act, Section 8-13-10 et seq. of the South Carolina Code of Laws (1976), governs the elimination of conflicts of interest of public officials and employees. You have advised that you have spoken with officials of the State Ethics Commissions about any potential conflict of interest and actions to be taken if necessary.

Section 59-103-10 of the Code establishes the State Commission on Higher Education and provides the mechanism for appointment thereto. That section also provides: "No member may be an employee or member of a governing body of a public or private institution of higher learning in this State." This statute would appear to eliminate any conflict of interest which could be presented if a member of the Commission were to be an employee or trustee of a public or private institution of higher learning of this State. You advise that you are neither an employee nor a member of the governing body of any such institution; thus, in our opinion, you would meet that qualification for appointment to the Commission. The fact that your brother is a member of the Board of Trustees of the College of Charleston is not a basis for disqualification of your potential service on the Commission.

It is difficult to imagine a situation in which any action which you might take as a member of the Commission would affect the pecuniary interests of your brother. For example, compensation of trustees of the College of Charleston is provided by Section 59-130-20 of the Code; any amendment thereto would be made by the General Assembly and not by the Commission.

It could be argued that you could be biased favorably on matters affecting the College of Charleston since your brother is a trustee. The same argument could be raised as to any member of the Commission who attended any public or private institution under the jurisdiction of the Commission, however. The General Assembly recognized and took steps to eliminate the potential for conflict of interest when that body enacted the above-cited sentence in Section 59-103-10. As

a public servant, any member of the Commission would be expected to perform his duties in an unbiased manner, for the benefit of the Commission. Thus, your brother's service as a trustee of the College of Charleston should not be an automatic conflict of interest if you should serve on the Commission.

*2 An opinion of this Office cannot possibly anticipate all matters which might come before a public body such as the Commission on Higher Education. While we cannot identify a conflict of interest which would automatically disqualify you from membership on the Commission, there could be instances when you, or any other member of the Commission, might encounter a conflict of interest, whether from your brother's service on the Board of Trustees of the College of Charleston or from some other source such as a business dealing. In such a case, you would follow the procedures of the State Ethics Act as directed by Gary Baker, with whom you talked.

With kindest regards, I am
Sincerely,

Patricia D. Petway
Assistant Attorney General

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